VOLUME I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 488

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER,

vs.

CHICAGO STOCK YARDS COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 23, 1942
CERTIORARI GRANTED DECEMBER 7, 1942

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1941.

No. 3730.

CHICAGO STOCK YARDS COMPANY,

PETITIONER FOR REVIEW,

v.

COMMISSIONER OF INTERNAL REVENUE.

PETITION FOR REVIEW OF DECISION OF UNITED STATES BOARD OF TAX APPEALS.
DECISION, MARCH 29, 1941.

RECORD ON PETITION FOR REVIEW.

VOLUME I.

Pages 1 to 574, inclusive.

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BOSTON:
PRINTED UNDER DIRECTION OF THE CLERK.
1942.

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1941.

No. 3730.

CHICAGO STOCK YARDS COMPANY,

PETITIONER FOR REVIEW,

v.

COMMISSIONER OF INTERNAL REVIEW.

RECORD ON PETITION FOR REVIEW.

[FILED IN CIRCUIT COURT OF APPEALS NOVEMBER 6, 1941.]

DOCKET NO. 83797.

CHICAGO STOCK YARDS COMPANY, PETITIONER,

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

APPEARANCES.

For Taxpayer:

Lawrence E. Green, Esq.,
Joseph K. Moyer, Esq.,
Francis B. Keeney, Esq.,
Edward J. Keelan Jr., Esq.,
J. N. Welch, Esq.,
Warren W. Grimes, Esq.,
J. Bond Smith, Esq.

For Commissioner:

O. W. Swecker, Esq.,
P. M. Clark, Esq.,
S. B. Pierson, Esq.,
A. D. King, Esq.,
R. H. Transue, Esq.

DOCKET ENTRIES.

1936

Apr. 23—Petition received and filed. Taxpayer notified. (Fee paid)

Apr. 23—Copy of petition served on General Counsel.

May 29—Amendment to petition filed by taxpayer. 6/1/36 copy served.

May 29—Answer filed by General Counsel.

Jun. 2—Copy of answer served on taxpayer.

1937

Oct. 26—Motion for circuit hearing at Boston, Mass. filed by General Counsel.

Oct. 30—Hearing set Dec. 1, 1937 on motion.

Dec. 1—Hearing had before Mr. Sternhagen on respondent's motion to place on Circuit Calendar. Oral motion to change from Boston to New York granted. Written motion to be filed.

Dec. 2—Motion for circuit hearing at New York City filed by General Counsel. 12/2/37 granted.

1938

Jul. 29—Hearing set beginning Oct. 3, 1938 at New York City.

Aug. 23—Motion for leave to amend petition, amendment lodged, filed by taxpayer. 8/23/38 granted.

Aug. 23—Motion to restore case to the General Calendar and set for Nov. 28, 1938 at Washington, D. C. filed by taxpayer.

Aug. 23—Motion to restore case to the General Calendar granted.

Aug. 23—Praecipes for appearances of J. N. Welch, Edward J. Keelan, Jr., Lawrence E. Green and

Francis B. Keeney as counsel for petitioner filed.

Aug. 24—Copy of motion and amended petition served on General Counsel.

Oct. 13—Answer to amendment to petition filed by General Counsel.

Oct. 26—Copy of answer to petitioner's amendment to petition served on taxpayer.

Nov. 8—Motion for a continuance to Jan. 15, 1939 filed by taxpayer.

1938

Nov. 8—Hearing set Nov. 9, 1938 on motion.

Nov. 8—Copy of motion and notice of hearing served on General Counsel.

Nov. 9—Motion for a continuance to Jan. 15, 1939 granted and continued to Jan. 30, 1939.

Nov. 9—Hearing had before Mr. Arundell on motion of petitioner to continue merit hearing to Jan. 1939—Objected to by respondent. Continued to Jan. 30, 1939.

1939

Jan. 30—Hearing had before Mr. Sternhagen on merits. Hearing continued to Jan. 31, 1939. Stipulation of facts filed, original and one copy with exhibits S-1 to S-69 inc. attached.

Jan. 31—Transcript of hearing of Jan. 30, 1939 filed.

Jan. 31—Hearing had before Mr. Sternhagen on merits. Hearing continued to Feb. 1, 1939.

Feb. 1—Hearing had before Mr. Sternhagen on merits. Hearing continued to Feb. 2, 1939.

Feb. 1—Transcript of hearing of Jan. 31, 1939 filed.

Feb. 2—Transcript of hearing of February 1, 1939 filed.

Feb. 2—Hearing had before Mr. Sternhagen on merits. Hearing continued to Feb. 3, 1939.

Feb. 3—Hearing had before Mr. Sternhagen on merits. Hearing continued to Feb. 6, 1939.

Feb. 4—Transcript of hearing of Feb. 3, 1939 filed.

Feb. 6—Hearing had before Mr. Sternhagen on merits. Hearing continued to Feb. 7, 1939.

Feb. 6—Transcript of hearing of Feb. 2, 1939 filed.

Feb. 7—Hearing had before Mr. Sternhagen on merits. Hearing continued to Feb. 8, 1939.

Feb. 7—Transcript of hearing of Feb. 6, 1939 filed.

Feb. 8—Hearing had before Mr. Sternhagen on merits. Hearing continued to Feb. 9, 1939.

Feb. 8—Transcript of hearing of Feb. 7, 1939 filed.

Feb. 9—Hearing had before Mr. Sternhagen on merits. Both briefs to be filed by 4 17 39. Briefs not to be served until briefs of both sides are filed. Briefs to be served simultaneously. Parties to have 20 days to file replies. Thereupon the case is to be considered submitted.

Feb. 9—Transcript of hearing of Feb. 8, 1939 filed.

Feb. 13—Transcript of Hearing of Feb. 9, 1939 filed.

Apr. 14—Brief filed by General Counsel. Mimeographed copies received 4 19 39.

Apr. 17—Brief filed by taxpayer. 4 18 39 copy served.

Apr. 19—Stipulation to correct the transcript of record filed.

May 1—Reply brief filed by taxpayer 5 8 39 copy saved.

May 8—Reply brief filed by General Counsel. Mimeographed copies received 5 11 39.

1940

Mar. 20—Findings of fact and opinion rendered, Mr. Smith. Decision will be entered under Rule 50.

1940

Mar. 22—Order that findings of fact and opinion promulgated 3/20/40 be corrected entered.

Apr. 5—Computation of deficiency filed by General Counsel.

Apr. 8—Hearing set April 24, 1940 on settlement.

Apr. 10—Hearing set June 19, 1940 on settlement. Revised notice.

Apr. 18—Motion to modify findings of fact and for additional findings of fact filed by taxpayer. 16 printed copies filed 4/19/40.

Apr. 18—Motion for further hearing before the full Board or a division of the Board filed by taxpayer. 16 printed copies filed 4/14/40.

Apr. 18—Motion for rehearing and for a further hearing on the grounds of newly discovered evidence and affidavit attached in support of motion filed by taxpayer. 16 printed copies received 4/19/40.

Apr. 18—Notice of appearance of Swagar Sherley as counsel for taxpayer filed.

Apr. 23—Notice to send all notices to Swagar Sherley filed by Joseph K. Moyer.

Apr. 23—Copy of motion served on General Counsel.

May 6—Praecipe for appearance of H. B. Weaver, Jr., as counsel for petitioner filed.

Jun. 8—Notice of appearance of J. Bond Smith and Warren W. Grimes as counsels for taxpayer filed.

Jun. 11—Motion for a continuance filed by taxpayer. 6/12/40 granted.

Jun. 12—Notice of withdrawal of Swagar Sherley and H. B. Weaver, Jr. as counsels for petitioner filed.

Jul. 5—Order setting hearing 7 18 40 on motion entered.

Jul. 18—Hearing had before Mr. Smith, Kern and Opper on motion to modify findings of fact and for additional findings of fact. Motion for rehearing and further hearing—C. A. V. Affidavit in further support of petitioner's motion (granted) filed. 20 printed copies.

Jul. 30—Transcript of hearing of July 18, 1940 filed.

Aug. 1—Copy of motion and affidavit of James A. McDonough in support of petitioner's motion for rehearing and for further hearing served on General Counsel.

Sep. 21—Order denying motion for rehearing and further hearing and setting for argument on Oct. 1, 1940 the motions "to modify findings of fact and for additional findings of fact and for further hearing entered. Memorandum sur order attached.

Oct. 1—Hearing had before Members Smith, Kern and Opper. Petitioner to modify findings of fact and for additional findings of fact and for further hearing. C.A.V. Petitioner's offer of proof re: order of Board 9 21 40.

Oct. 15—Transcript of hearing of 10 1 40 filed.

1941

Jan. 25—Order supplementing Board's findings of fact and denying motions to modify findings of fact and additional findings and for further hearings entered.

Feb. 11—Order that parties file recomputations of deficiencies for the years 1930, 1932 and 1933 if such are necessary in accordance with the Board's report promulgated 3 20 40 as

amended 1 25 41 on or before March 12, 1941 at which time hearing will be had thereon entered.

Mar. 1—Motion for special rule filed by taxpayer.

1941

Mar. 4—Motion for ruling preliminary to Rule 50 computation filed by taxpayer.

Mar. 6—Computation for entry of decision filed by taxpayer.

Mar. 6—Alternative computation for entry of decision filed by taxpayer.

Mar. 7—Order that motions of petitioner filed March 1 and 4, 1941 be denied entered.

Mar. 7—Copy of alternative computation served on General Counsel.

Mar. 12—Hearing had before Mr. Smith on settlement under Rule 50.

Mar. 19—Transcript of hearing of March 12, 1941 filed.

Mar. 29—Decision entered, Smith, Div. 5. Memorandum sur decision attached.

Jun. 13—Motion to fix the amount of bond at $6,919,300.00 filed by taxpayer.

Jun. 13—Order fixing amount of bond at $6,919,300.00 entered.

Jun. 27—Supersedeas bond in the amount of $6,919,300.00 approved and ordered filed.

Jun. 27—Petition for review by U. S. Circuit Court of Appeals, 1st Circuit, filed by taxpayer.

Jun. 27—Statement of points filed by taxpayer.

Jun. 27—Proof of service of petition for review and statement of points filed.

Jul. 23—Designation of contents of record filed by taxpayer.

Aug. 1—Motion for extension of 50 days from August 6, 1941, to complete and transmit the record filed by taxpayer.

Aug. 1—Order enlarging time to Sept. 25, 1941 to transmit and deliver record entered.

Aug. 14—Copy of an order from 1st Circuit re exhibits filed.

Aug. 14—Copy of an order from 1st Circuit extending time to Dec. 31, 1941 to prepare and transmit the record filed.

Oct. 10—Stipulation as to contents of record filed.

[Title omitted.]

PETITION.

[Filed April 23, 1936.]

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:AR:B-3, SRW-90D) dated January 27, 1936, and as a basis of its proceeding alleges as follows:

1. The petitioner is a corporation organized and created under the laws of the State of Maine, with a mailing address at 1 Court Street, Boston, Massachusetts, c/o F. N. Prince & Company.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on or after January 27, 1936.

3. The taxes in controversy are income taxes for the calendar years 1930, 1932 and 1933, and amount to $4,266,

436.99. Of this amount $4,175,468.09 represents taxes asserted under the provisions of section 104 of each of the Revenue Acts of 1928 and 1932, and $90,968.90 represents taxes asserted under the provisions of section 13 of each of the Acts mentioned.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) So much of the proposed deficiency as is based upon the application of section 104 of the stated acts is illegally asserted, in that those sections of the statute violate the Constitution of the United States.

(b) The proposed deficiency is erroneously asserted to the full extent that it is in any way, manner or form based upon the theory or assertion that the petitioner was created, organized or availed of during the taxable years 1930, 1932 and or 1933 for the purpose of preventing the imposition of the surtax upon its stockholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed.

(c) The proposed deficiency is erroneously asserted to the full extent that it is in any way, manner or form based upon the theory or assertion that the petitioner is a mere holding or investment company, or that its gains or profits were permitted to accumulate beyond the reasonable needs of the business.

(d) The respondent in his notice of deficiency has wholly neglected and failed to state upon what grounds, if any, he invokes the provisions of section 104 of the Revenue Act of 1928 and/or 1932; neither does said notice in any way specify in what particular or particulars the petitioner is held to have violated the provisions of those statutes, and accordingly said notice is not such a notice of deficiency as provided for under

section 272 (a) of the Revenue Acts of 1928 and 1932, respectively.

(e) In determining the petitioner's taxable net income for the year 1930 the Commissioner has erroneously restored thereto and refused to allow as a deduction the sum of $499,973.08, representing the loss sustained by the petitioner upon the sale by it in 1930 of 1552 shares of the capital stock of the Central Manufacturing District Company, which said loss was taken as a deduction by the petitioner in its computation of its reported taxable net income.

(f) In determining the petitioner's taxable net income for the year 1932 the Commissioner has erroneously restored thereto and refused to allow as a deduction the sum of $227,202.03 representing the loss sustained by the petitioner upon the sale by it in 1932 of 3050 shares of the capital stock of the Stock Yards National Bank and 240 shares of the capital stock of the Central Manufacturing District Bank which said loss was taken as a deduction by the petitioner in its computation of its reported taxable net income. The Commissioner further erred in failing to find as a loss and allow as a deduction the sum of $233,426.53, being the cost of the said shares of the capital stock of said Stock Yards National Bank and said Central Manufacturing District Bank which became wholly worthless during the year 1932.

(g) In determining the petitioner's taxable net income for the year 1932 the Commissioner has failed to find that the petitioner is entitled to a deduction either as a business expense or as a loss sustained, the sum of $24,000.00 representing the liability incurred in that amount during the year 1932 by reason of a one hundred percent assessment ordered in 1932 by the bank-

ing authorities of the State of Illinois against the petitioner and by it ultimately paid on account of its ownerships of 240 shares of the capital stock of Central Manufacturing District Bank and which said shares of stock were by no means whatsoever enhanced or increased in value by reason of such assessment or payment thereof.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) In the first instance the petitioner alleges that it did not in any of the years 1930, 1932 or 1933 violate the provisions of the Revenue Act of 1928 and 1932 as set forth in each of said acts under Section 104 thereof, in that it was neither formed nor availed of in any of said years for the purpose of preventing the imposition of the surtax upon its shareholders through the medium of permitting its gains and profits to accumulate instead of being divided or distributed. Still further the petitioner alleges that during none of said years was it a mere holding or investment company, nor were its gains and profits permitted at any time during said years to accumulate beyond the reasonable needs of its business. If, however, the Board should sustain the respondent in his determination that the provisions of Section 104 of each of the said Revenue Acts are applicable in the premises, then the petitioner alleges that the provisions of Section 104 of each of the Revenue Acts of 1928 and of 1932 violate the Tenth Amendment to the Constitution of the United States in that said sections of said acts constitute an attempt by Congress under the guise of a tax to exercise a power not delegated to the United States but one reserved to the several States; that the regulation of the internal affairs of corporations which are chartered by States

is reserved to the several States and governed as their Constitutions may declare or their Legislatures provide; and that all discretion as to the declaration of dividends has been committed to boards of directors by the Legislature of the State of Maine, under the laws of which State the petitioner was organized and by virtue of which it has existence.

Petitioner further alleges that the provisions of Section 104 of each of the Revenue Acts of 1928 and of 1932 seek to impose a tax or obligation for refraining from doing that which there is no obligation to do and which Congress is without authority either to direct or to compel; that the exaction sought to be imposed is made to depend upon vague and indefinite standards determinable, if at all, at the whim and caprice of the taxing authorities; that a burden is sought to be imposed upon a statutory net income by reason of an accumulation of "gains and profits" having no necessary relation in amount or source to such statutory taxable net income; that the classifications undertaken to be established by said sections are arbitrary and capricious; and that so conditioned as aforesaid, the exactions sought to be imposed by said sections of said Acts are violative of the Fifth Amendment to the Constitution of the United States.

Petitioner further alleges that by virtue of Section 104 of each of the Revenue Acts of 1928 and of 1932 there is sought to be imposed in the guise of an income tax an unconscionable burden neither warranted nor authorized by the Sixteenth Amendment to the Constitution of the United States; that said sections seek to lay a burden upon one taxpayer for the failure of another taxpayer to pay taxes neither imposed nor imposable under the law; that the burden sought to be

imposed is obviously penal in fact yet nevertheless is so conditioned as to imposition that the amount thereof has, at best, only the most indefinite relation to the amount of the surtax avoidance condemned by the statute; that so conditioned the exaction sought to be imposed is without warrant or justification under the specific provisions of the Sixteenth Amendment authorizing Congress to lay and collect taxes on incomes without apportionment; and that the implied powers granted as an incident to said Amendment do not authorize the imposition of a penalty so conditioned as to fact and circumstance; and, accordingly, if the exaction were made it would offend the Due Process clause of the Fifth Amendment.

(b) Irrespective as to the force, validity or constitutionality of Section 104 of the Revenue Acts of 1928 and 1932, petitioner alleges that it did not in any of the years 1930, 1932 and or 1933 violate the provisions of either of said sections of said acts. This, the petitioner asserts, notwithstanding that the respondent has not in his notice of deficiency set forth any factual grounds in support of his invocation of said statutes. In support of its allegation, as here made, the petitioner submits the following matter:

I.

The petitioner is a corporation organized under the laws of the State of Maine. Its charter, dated September 25, 1911, grants to the petitioner exceptionally broad corporate powers in conformity with which its business has at all times been conducted. Petitioner's authorized capital stock is $8,000,000 in 80,000 shares, each of the par value of $100, all of which was paid up, issued and outstanding during each of the years 1930, 1932 and 1933.

The organization of the petitioner had its inception in a proposal in the nature of an aggeement, dated June 30, 1911, prepared by a committee of which Richard Olney was Chairman. This proposal ("Plan") was submitted to the common stockholders of the Chicago Junction Railways and Union Stock Yards Company, a New Jersey corporation, (sometimes hereinafter referred to as the New Jersey Company).

The circumstance giving rise to the preparation and submission of the "Plan" and the ultimate organization of the petitioner was principally the fact that the grant of corporate authority in the charter of the New Jersey Company was couched in such restrictive terms as seriously to restrain and hamper it in the management, control and financing of its operations and business as the same existed at that time.

Pursuant to said proposal the petitioner was chartered as aforesaid and on October 1, 1914 in accordance with the terms of an agreement then entered into, the petitioner in accordance with its charter authorizations entered upon its various undertakings as the same related to the conduct of the affairs of the New Jersey Company and its associated corporations.

As of October 1, 1914, the New Jersey Company owned or controlled subsidiaries as follows:

1. *Union Stockyards and Transit Company*, an Illinois corporation, owning and operating stock yard properties, probably the largest in the world, as well as other large holdings in buildings, banks, warehouses, hotels, etc. located on some five hundred acres of land within the limits of Chicago, Illinois.

2. *Chicago Junction Railway Company*, an Illinois corporation owning a belt line railway serving the stock yards and the Central Manufacturing District areas.

3. *Produce Terminal Company*, an Illinois public service

corporation furnishing power and light to the Chicago stock yards district.

4. *Stock Yards Harness and Saddlery Company*, an Illinois corporation, the business of which is indicated by its name.

5. *Chicago Junction Railroad Company*, an Illinois corporation, operating a line of elevated railways.

6. *Central Manufacturing District*, a Massachusetts Trust, owning some three hundred acres of land in Chicago, Illinois, improved with business and manufacturing structures, leased to and occupied by approximately three hundred tenants engaged in diverse industries and occupations.

In the creation of the petitioner it was the purpose and intent of the organizers to provide a facility so circumstanced in position and power that extensive properties and business activities above indicated might have a centralized and lawfully authorized source of management and control, all directed to the most efficient and remunerative operation of the several enterprises in the group.

On the above showing of a date of organization (1911) long prior to the effective date of the 16th Amendment to the Constitution or of Section 104 of the governing Revenue Acts, and of the purpose and intents then existing petitioner at this point alleges that it was neither created, organized nor formed for the purposes interdicted by Section 104 of either of the Revenue Acts of 1928 or 1932.

II.

The petitioner next alleges that such portions of its gains and profits for the years 1930, 1932 and 1933 as were not divided or distributed in those years were not permitted to accumulate for the purpose of preventing the imposition of the surtax upon its shareholders, but on the contrary were retained by the petitioner for lawfully corporate uses as

duly authorized by its charter; deemed proper by its board of directors; and fully warranted and justified in the light of petitioner's needs and most particularly so by reason of economic and business conditions existing and known to exist in each and all of those years.

As bearing upon the apportionment of its gains and profits between amounts distributed and amounts retained the petitioner alleges that the fixed and fluctuating charge obligations of the petitioner were such as to justify and to require the maintenance of a large surplus reflected by cash or "quick assets".

By legally enforceable obligations entered into prior to 1930 and continuing until years subsequent to 1933 the petitioner had bound itself directly and by way of guaranty to the payment of annual fixed charges in excess of $1,700,000.

By agreements and obligations equally enforceable by law the petitioner had bound itself directly and by way of guaranty to pay annually large amounts, fluctuating to some extent in amount, but certain in incidence. These obligations, subject to be paid by petitioner represent in the main its guarantee to assume and to pay certain of the operating costs, including taxes, of the New Jersey Company, and its subsidiaries. The obligations so guaranteed were in the years 1930, 1932 and 1933 in the approximate amount of $500,000 per annum and could reasonably be expected in future years materially to exceed that amount.

These fixed and fluctuating charge obligations, totalling an annual amount in excess of $2,000,000 were guaranteed as to payment by petitioner at all events, and wholly without respect to the circumstance it might have no annual earnings whatsoever out of which to meet the same when and if called upon so to do.

Petitioner further alleges that it was incumbent upon it

in each of the years 1930, 1932 and 1933 to retain and hold a portion of its gains and profits for those years in order that it should be prepared to pay, at maturity, very material obligations in the form of bond obligations.

As of December 31, 1930, petitioner was directly liable for the payment of $3,137,000 of its "5 per Cent Gold Bonds" due and payable in October 1961 unless default should be made in the payment of interest whereupon the principal would immediately become due and payable.

The petitioner was further bound at all times here concerned either as guarantor or indirectly obligated, and by imperative economic necessity, to the payment of the bonded and mortgage indebtedness of the said New Jersey Company and of its subsidiary companies, existing on December 31, 1930 in a total amount in excess of $19,000,000 of which amount $14,000,000 was due and payable April 1, 1940; further, the several bond obligations were subject to demand and payment immediately upon default in interest or installment of principal as duly provided in the several mortgage instruments and further so conditioned by mortgage agreement as to the majority of such obligations that default in interest could be avoided through the medium of additional borrowings by the primary obligors only under the most onerous conditions; and further, the money market at all times here concerned was such that in any event the borrowing of funds for this or any purpose was of the most remote possibility.

The petitioner knew at all times here concerned and the Board will judicially notice that in the year 1929 there occurred a great collapse of values of all classes of property, commodities and securities, that the depression then commenced progressively became greater, and continued through the year 1933 compelling the conclusion even then that the depression and the state of economic distress was

not temporary. Accordingly, petitioner alleges that in withholding from distribution a portion of its gains and profits for the years 1930, 1932 and 1933 its action was based upon determinations made in the full knowledge that from year to year it was faced with the ominous possibility of meeting burdensome obligations with no certainty whatsoever of current gains or profits sufficient to meet all or any part of such charges. Such determinations were likewise made in realization that a very material portion of the bonded debt of petitioner's associated companies fell due within a comparatively short period and that due to the wide spread conditions of financial distress it was reasonably certain that refunding or refinancing at the maturity dates could not be effected. It was accordingly incumbent upon petitioner at all times here concerned to be so fortified in its financial position that it would meet any or all of the said burdens, lest the failure so to do in any particular should precipitate the collapse of petitioner's economic and industrial structure.

Petitioner further asserts that in retaining a portion of its gains and profits for the years 1930, 1932 and 1933 its reasons for and belief for the necessity for such action were by no means based solely upon apprehension and conjecture. On the contrary the petitioner was in fact during the period of those years called upon to financially aid and assist the several companies in its operating group and did advance to them approximately five million dollars to protect and conserve its interest therein, all directed to the prevention of losses which if sustained might well have resulted in realized losses in excess of total gains and profits for the years here involved.

Petitioner likewise asserts and maintains that the retention of a portion of its earnings from year to year finds full warrant and justification by reason of the fact that the sev-

eral operating companies from which flow the principal part of petitioner's earnings are so circumstanced as to statutory and other forms of regulatory control and particularly as to the charges they may lawfully make for their services and products, that neither those companies nor the petitioner are in a position whereby the revenues to be received through operations may be adjusted to meet the conditions of increased costs of operation and production or the various hazards and exigencies encountered in their operation. Even more, certain of the operating companies, by reason of their public service nature may be compelled to continue their activities notwithstanding that operations may result in loss rather than earnings, which losses the petitioner may be compelled to absorb by reason either of its guaranty agreements or of economic necessity.

Petitioner further alleges that in each of the years 1930, 1932 and 1933 and in years prior thereto it received large sums in the name of dividends from the New Jersey Company and the same were accounted for on the books and records of the petitioner as income. These sums in the aggregate amounted to many millions of dollars and if such sums had been retained by the New Jersey Company and employed by it in setting up on the books of that company a reserve for a sinking fund, as it might properly have done, with respect to its bonded debt and other obligations, then the surplus account of the petitioner would have been $10,492,885 less on December 31, 1930, $11,862,122.51 less on December 31, 1932 and $12,685,590.70 less on December 31, 1933. The petitioner deeming itself either directly or indirectly bound to the payment of such debts and obligations of the New Jersey Company it was proper for it to retain in its surplus account undistributed said sums, and to have done otherwise would have been contrary to good

accounting practice, sound business judgment and established legal principles.

In determining in each of the years 1930, 1932 and 1933 what portion of its gains and profits should be distributed as dividends, petitioner took into consideration all facts and circumstances, as the same related to or bore upon the gains and profits of each of said years. Inescapable consideration was given to the circumstance that due to the depression vast shrinkage had taken place in the values of petitioner's properties and to their underlying assets. Regard was had to the matter of maintaining the established dividend rate and policy and to the duty laid upon petitioner by law to declare and pay as dividends no greater amount than was consistent with wise administration of a going concern. The dividends declared and paid and the amount of gains and profits withheld from distribution were determined solely upon factors and considerations surroundings the requirements of the business as then circumstanced and with no purpose or intent whatsoever of preventing the imposition of the surtax upon petitioner's stockholders.

III.

Petitioner alleges that it paid dividends in the amount of $400,000 in 1930, $400,000 in 1932 and $400,000 in 1933; and that the ratio of said dividends to petitioner's gains and profits for each of said years was materially in excess of dividends to profits generally declared and paid in each of said years by other corporations; and suggesting to the Board that the word "reasonable" is a relative term and that which would be reasonable in one situation may be clearly unreasonable in another, petitioner alleges its dividends paid in each of said years to have been "reasonable" in the premises, and that to have declared and paid divi-

dends greater than those distributed would have been in reckless disregard of attendant facts and circumstances and in violation of the duties and obligations laid upon petitioner by law.

IV.

Petitioner is not a mere holding or investment company. On the contrary the petitioner is engaged in the active management and control of a group of associated companies most broadly engaged in diversified fields of enterprise. At all times here concerned the several companies in the associated group have looked ultimately to the petitioner both for direction and control in all matters of policy, basic plan and scheme of operation. Petitioner has at all times acted as the fiscal and financial agency for the entire group, advancing from time to time its own funds or arranging for borrowings, upon the great bulk of which petitioner is guarantor as aforesaid. So circumstanced with relation to the several companies in the group petitioner alleges that it is not a "mere holding or investment company" within the ordinary meaning of that term or as used and employed in Section 104 of the Revenue Act of 1928 and 1932.

V.

Petitioner's gains or profits have not been permitted to accumulate beyond the reasonable needs of its business. On the contrary petitioner alleges that its true and actual surplus computed and determined with due respect to all relevant factors not only was not beyond the reasonable needs of its business but in truth and in fact was in such amount as to be insufficient and unreasonably below its actual necessities when judged in the light of prudence and provident business administration. This petitioner alleges in the light of the facts and circumstances above set forth

showing the burden of debt and obligation it was bound to meet as guarantor thereof and in view of further facts immediately hereinafter set forth.

Petitioner's surplus account as shown on its books for each of the years 1930, 1932 and 1933 is in effect materially overstated by reason of the fact that there is reflected therein in each of said years amounts representing the "recorded receipts" of dividends from the New Jersey Company as above mentioned. Proper adjustment of the books and accounts of petitioner and of the New Jersey Company so as to set up a proper sinking fund in the accounts of the latter company and properly to show the state of account between that company and petitioner by reason of said dividend payments discloses petitioner to have been so circumstanced in relation to such dividend payments to it that petitioner's book surplus as of December 31, 1930 was overstated in excess of $10,000,000, was overstated as of December 31, 1932 in excess of $11,800,000 and overstated on December 31, 1933 in excess of $12,680,000.

Petitioner alleges that upon elimination of no more than the immediately above disclosed overstatements its surplus is reduced to such a degree as to be wholly inadequate for its ordinary and necessary needs; and that when further and proper reserves are set up to reflect reasonable provisions for petitioner's fixed and fluctuating charge obligations, together with reasonable reserves to reflect the diminution of asset values due to the depression, petitioner has in fact but the least, if any at all, actual accumulated gains and profits.

(c) In computing its reported taxable net income for the year 1930, petitioner took, as a deduction from gross income, the amount of $499,973.08, representing the loss sustained in that year upon the sale of 1552 shares of the capital stock of the Central Manufacturing District Company.

The said stock was acquired by petitioner in the year 1925 at a cash cost of $500,000. During the year 1930, petitioner placed said shares of stock in the hands of a brokerage firm for sale at public auction; such sale was duly advertised; and the shares were sold to the highest bidder. The net proceeds of such sale received by petitioner were $26.92 resulting in a loss on the sale of $499,973.08 which was sustained by the taxpayer in the year 1930, and was deducted as aforesaid in the computation of its taxable net income for that year.

(d) Petitioner in computing its taxable net income for the year 1932 took as a deduction the amount of $221,202.03 representing the loss sustained upon the sale in that year of 3050 shares of the capital stock of Stock Yards National Bank and 240 shares of the capital stock of Central Manufacturing District Bank. The said shares of stock had been acquired by the petitioner in years prior to 1932 at a cash cost of $233,426.52 and were sold in 1932 with cash proceeds to the petitioner of $12,224.50, so that upon such sale petitioner sustained a loss of $221,202.03, as above stated. The respondent in his computation of petitioner's taxable net income for the year 1932 has disallowed the said sum of $221,202.03 as a deduction on the grounds that both petitioner and its vendee under said sale were both under the complete control of Mr. Frederick H. Prince and by reason of such control of both vendor and vendee no deductible loss was sustained by reason of the sale.

Petitioner alleges that the sales here involved were bona fide transactions, lawfully entered into and concluded by separate legal entities whereunder, for full and adequate considerations the transfers were made and as a result thereof petitioner sustained a loss as above set forth. However, and in the alternative, if it be the finding of the Board that the transfers so made were ineffective to divest the

petitioner of all right, title and interest in and to said shares of stock, then the Board should find that petitioner is entitled to a deduction from gross income in the year 1932 in the sum of $233,426.53, representing the cost of said shares of stock which became wholly worthless and without value during the year 1932, whereby petitioner, if still the owner of the same on December 31, 1932 sustained a loss in the amount of the cost thereof as above set forth.

(c) Petitioner alleges that in computing and determining its taxable net income for the year 1932 it is entitled to a deduction either by way of a loss sustained or as a business expense, in the sum of $24,000.00, representing a 100% assessment made in that year by the banking authorities of the State of Illinois against and upon 240 shares of the capital stock of the Central Manufacturing District Bank owned during a part of the year 1932 by the petitioner and which assessment it later duly paid. The said bank was closed in June 1932 on order of the Auditor of Public Accounts of the State of Illinois and was not thereafter reopened or reorganized. On October 11, 1932, the receiver of said bank, acting under the authority of the said Auditor issued his call for the assessment aforesaid. As of December 31, 1932 the said Bank stock was wholly worthless, notwithstanding the 100% assessment made thereon, so that by reason of such assessment and payment the petitioner acquired nothing of value, and accordingly is entitled to a deduction of said amount. Petitioner keeps its books and makes its return upon the accrual system of accounting and therefore the assessment so made represented an accrued liability owing by the petitioner on December 31, 1932. In determining its reported taxable net income for the year 1932, petitioner took no deduction in respect to said $24,000 assessment, nor did the respondent give any effect thereto

in his computation of taxable net income as shown in the notice of deficiency.

6. WHEREFORE, the petitioner prays that this Board may hear the proceedings and determine that;

(a) The petitioner is not subject to tax in any of the years 1930, 1932 and 1933 under the provisions of Section 104 of the Revenue Acts of 1928 and 1932;

(b) The Board find that Section 104 of the Revenue Acts of 1928 and 1932 is unconstitutional and of no force and effect;

(c) The taxable net income of petitioner for the year 1930 should be so computed and determined as to give effect to deduction of $499,973.08, representing the loss sustained on the sale of securities in that year as above set forth;

(d) The taxable net income of petitioner for the year 1932 should be so computed and determined as to give effect to a deduction of $221,202.03 or $233,426.52 representing either the loss on the sale of securities in that year or the loss sustained by reason of said securities becoming wholly worthless in that year;

(e) The taxable net income of petitioner for the year 1932 should be so computed and determined as to give effect to a deduction of $24,000 on account of and in respect to the 100% assessment made in that year against the stock holdings of petitioner in the Central Manufacturing District Bank as aforesaid;

(f) That the deficiency, if any, due from this taxpayer in each of the years 1930, 1932 and 1933 be recomputed accordingly.

JOSEPH K. MOYER, *Counsel for Petitioner*
1343 H Street, N. W., Washington, D. C.

Of Counsel:

WEYMOUTH KIRKLAND, Esq.,
WILLIS B. NANCE, Esq.
F. R. C. STEELE, C.P.A.
CRAIG L. REDDISH, Esq.

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF NORFOLK } ss.

April 7, 1936.

Then personally appeared James A. McDonough who on his oath says, that he is Vice-President of the petitioner in this proceeding, and as such is duly authorized to verify the foregoing petition; that he has read the petition or has had the same read to him and is familiar with the statements contained therein, and that the facts stated therein are true except as to those facts stated to be upon information and belief and those facts he believes to be true.

JAMES A. McDONOUGH, Vice-President,
Chicago Stock Yards Company.

Subscribed and sworn to before me this 17 day of April, 1936.

FRANK R. PEGRAM,
Notary Public

EXHIBIT A

[Filed May 29, 1936.]

AMENDMENT TO PETITION.

Jan 27 1936

IT:AR:B-3
RSW 90D

Chicago Stock Yards Company,
1 Court Street,
Boston, Massachusetts.

Sirs:

You are advised that the determination of your income tax liability for the year (s) 1930, 1932 and 1933 discloses a deficiency of $4,266,436.99 as shown in the statement attached

In accordance with section 272 (a) of the Revenue Act of 1928 and section 272 (a) of the Revenue Act of 1932, as amended by section 501 of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing and filing of this form will expedite the closing of your return(s) by permitting

an early assessment of the deficiency and will prevent the accumulation of interest since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING, *Commissioner.*
By (Signed) CHAS. T. RUSSELL,
Deputy Commissioner.

Enclosures:
Statement
Form 870

STATEMENT.

IT:AR:B-3
RSW-9OD

In Re: Chicago Stock Yards Company,
1 Court Street,
Boston, Massachusetts.

Income Tax Liability.

Years	Income Tax Liability	Income Tax Assessed	Deficiency
1930	$1,910,467.38	$ 92,781.28	$1,817,686.10
1932	1,315,135.44	13,496.47	1,301,638.97
1933	1,160,075.13	12,963.21	1,147,111.92
Totals	$4,385,677.95	$119,240.96	$4,266,436.99

Reference is made to Bureau letter dated December 5, 1933, relative to your income tax liability for the taxable year 1930. Reference is also made to your protests dated July 11, 1933, September 27, 1933, August 25, 1934 and April 16, 1935 and to the information submitted at hearings held with your representatives.

At the suggestion of your attorney, Mr. Joseph K. Moyer, your income tax liability for the years 1932 and 1933 is included herein without affording an opportunity for a hearing.

After careful consideration of your Federal income tax returns, the protests mentioned above and all other available information, the Bureau holds that your corporation is subject to taxation under section 104 of the Revenue Acts of 1928 and 1932.

The computation is as follows:

1930.

Net income reported on return		$ 773,177.36
Additions:		
1. Bad debt disallowed	$ 13,386.00	
2. Loss on sale of stock disallowed	499,973.08	513,359.08
Net income (section 21)		$1,286,536.44
Additions:		
3. Dividends received	$2,217,331.68	
4. Interest on United States obligations	8,297.91	2,225,629.59
Net income (section 104(c))		$3,512,166.03

Explanation of Adjustments

1. This item has been disallowed for the reason that no evidence as to worthlessness has been presented. It appears that demand for payment was not made nor any action taken in order to substantiate worthlessness. Accordingly, it is not deductible under article 191, Regulations 74.

2. The loss on the sale of the stock of the Central Manufacturing District Company has been disallowed for the reason that from the evidence presented it does not appear that your corporation sold the same thing, carrying the

same rights, that if received when purchased. Accordingly, it is held that the loss sustained was not such a loss as is contemplated by section 23 (f) of the Revenue Act of 1928.

3 and 4. These items are a part of net income within the meaning of section 104(c) of the Revenue Act of 1928.

Computation of Tax.

Net income (section 21)	$1,286,536.44	
Tax at 12% (section 13)		$ 154,384.37
Net income (section 104(c))	3,512,166.03	
Tax at 50% (section 104(a))		1,756,083.01
Total tax assessable		$1,910,467.38
Tax assessed, account #401545		92,781.28
Deficiency		$1,817,686.10

1932.

Net income reported on return		$ 98,156.14
Additions:		
1. Recovery of coupon interest	$ 4,516.39	
2. Loss on sale of securities disallowed	222,007.03	226,523.42
Total		$ 324,679.56
Deduction:		
3. Profit on bonds canceled		14,000.00
Net income adjusted (section 21)		$ 310,679.56
Additions:		
4. Dividends received	$2,216,260.35	
5. Interest on United States obligations	17,894.09	2,234,154.44
Net income (section 104(c))		$2,544,834.00

Explanation of Adjustments.

1. This item represents accrued interest on bonds purchased in 1931 which was refunded in 1932 and omitted from income reported. The item is a part of income as defined in section 22 of the Revenue Act of 1932.

2. Losses sustained upon the sale of 3050 shares of Stock Yards National Bank stock and 240 shares of Central Manufacturing District Bank have been disallowed for the reason that after the sale they were owned or controlled by the same individual as before the sale, Mr. Frederick H. Prince. In the case of the Stock Yards National Bank the stock was sold through F. H. Prince & Co., brokers, to F. H. Prince & Co., Inc., the entire stock of this corporation was issued to Mr. Frederick H. Prince in exchange for 48,000 shares of the stock of your corporation of which stock Mr. Prince owned the controlling interest. On June 3, 1932, Mr. Prince created a trust for the benefit of his wife and children to which trust he transferred the entire capital stock of F. H. Prince & Co., Inc. Both your corporation and the corporation to which these shares were transferred are in the complete control of Mr. Frederick H. Prince. The 240 shares of the Central Manufacturing District Bank stock were transferred on December 31, 1932 through the same brokers and to the same investment company as the 3050 shares mentioned above.

In the decision of the United States Circuit Court of Appeals, 8th Circuit, No. 10079, March Term, Decided April 19, 1935, in the case of Sydney Schoenberg in which a similar question was involved the Court said in part: "The taxpayer has not actually changed his position and is no poorer than before the sale. The particular sale may be real but the entire transaction prevents the loss from being actually suffered. * * *

The loss sustained on the sale of 10,000 shares of New York Central Railroad Company's stock is not deductible for the reason that they were held less than two years and may not be offset by profits on United States bonds. Article 272, Regulations 77.

The losses disallowed are:

Stock Yards National Bank	$139,414.63
Central Manufacturing District Bank	81,787.40
New York Central Railroad Company	805.00
Total	$222,007.03

3. The profit reported upon the cancellation in 1932 of $200,000.00 of your own bonds originally sold in June, 1922 and reacquired in October, 1922 has been eliminated from income. General Counsel Memorandum 10739, Cumulative Bulletin XI-2, page 65, holds that bonds purchased by the issuing corporation, are retired at the time of purchase.

4 and 5. These items are a part of net income within the meaning of section 104 of the Revenue Act of 1932.

Computation of Tax.

Net income (section 21)	$310,679.56	
Tax at 13¾% (section 13)		$ 42,718.44
Net income (section 104(c))	$2,544,634.00	
Tax at 50% (section 104(a))		1,272,417.00
Total tax liability		$1,315,135.44
Tax assessed, account #401883		13,496.47
Deficiency		$1,301,638.97

1933.

Net income reported on return	$ 94,277.90
Additions:	
1. Profit on sale of securities held more than 2 years understated	1,446.11
Total	$ 95,424.01

Deduction		
2. Profit on sale of securities held less than 2 years overstated		100.00
Net income (section 21)		$ 95,324.01
Additions:		
3. Dividends received	$2,197,221.52	
4. Interest on United States obligations	1,390.63	2,198,612.15
Net income (section 104(c))		$2,293,936.16

Explanation of Adjustments.

1. Profit reported in item 10(b)	$ 28,701.53
Correct amount	29,847.64
Understatement	$ 1,146.11

Profit from the sale of securities held more than 2 years is computed in accordance with section 111 of the Revenue Act of 1932 and is as follows:

Selling price	$206,205.90
Less:	
Cost	176,358.26
Profit	$ 29,847.64

2. Profit reported on sale of your own bonds	$. 5,297.50
Correct profit	5,197.50
Overstated	$ 100.00

Your records indicate that the above bonds cost you when purchased $8,802.50 instead of $8,702.50 used in computing the profit.

3 and 4. See explanation for items 4 and 5 for 1932.

Computation of Tax.

Net income (section 21)	$ 95,324.01	
Tax at 13¾% (section 13)		$ 13,107.05
Net income (section 104(c))	$2,293,936.16	
Tax at 50% (section 104(c))		1,146,968.08
Total tax liability		$1,160,075.13
Tax assessed, account #401650		12,963.21
Deficiency		$1,147,111.92

Reference is made to your claim for refund of $3,300.00 for 1932.

The claim is based upon the contention that you are entitled to deduct $24,000.00 on account of the payment in May, 1934 of the 100 per cent assessment against you as owner of 240 shares of Manufacturing District National Bank stock, notice of which was received in October.

Since you refused to make payment of the assessment at once and contested the issue for a time before payment the amount is not deductible under Income Tax Ruling 2843, Cumulative Bulletin XIV-1, page 77, in the taxable year.

Official notice of the disallowance will be issued by registered mail in accordance with section 1103 (a) of the Revenue Act of 1932.

A copy of this letter has been mailed to your representatives, Joseph K. Moyer, 1343 H Street, N. W., Washington, D. C., Kirkland, Fleming, Green and Martin, 33 North La Salle Street, Chicago, Illinois, Patterson, Teele and Dennis, 1 Federal Street, Boston, Massachusetts, in accordance with the authority conferred upon them in the powers of attorney, executed by you and on file with the Bureau.

[Title omitted.]

ANSWER.

[Filed May 29, 1936.]

The Commissioner of Internal Revenue, by his attorney, Herman Oliphant, General Counsel for the Department of the Treasury, for answer to the petition of the above-named taxpayer admits and denies as follows:

(1) and (2) Admits the allegations contained in paragraphs (1) and (2) of the petition.

(3) Admits that the taxes in controversy are income taxes for the calendar years 1930, 1932 and 1933, and amount to $4,266,436.99, but denies the remainder of paragraph (3) of the petition.

(4) Denies the allegations of error contained in subparagraphs (a) to (g), inclusive, of paragraph (4) of the petition.

(5) (a) Denies the allegations contained in subparagraph (a) of paragraph (5) of the petition.

(5) (b) Denies the allegations contained in subparagraph (b) and paragraphs I to V, inclusive, thereunder, of paragraph (5) of the petition.

Denies generally and specifically each and every allegation set forth in taxpayer's petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the taxpayer's appeal be denied.

HERMAN OLIPHANT,
General Counsel for the
Department of the Treasury.

Of Counsel:

PHILIP M. CLARK,
STANLEY B. PIERSON,
Special Attorneys, Bureau of Internal Revenue.

[Title omitted.]

PETITIONER'S MOTION TO AMEND PETITION.

[Filed August 23, 1938.]

Now comes the above-named petitioner and moves for leave to amend the original petition filed in this action in accordance with its amendment accompanying this motion.

J. N. WELCH, *Counsel for Petitioner.*
60 State Street,
Boston, Massachusetts.

Granted August 23, 1938.

Ernest H. Van Fossan, *Member*
U. S. Board of Tax Appeals.

[Title omitted.]

PETITIONER'S AMENDMENT TO PETITION.

[Filed August 23, 1938.]

Now comes the above-named petitioner and amends the original petition filed in the above entitled action as follows:

(1) By inserting the following three paragraphs numbered (4)(h), (4)(i), and (4)(j) to follow after paragraph (4)(g) in the original petition as filed:

(4)(h) In determining the petitioner's net income for the year 1930, as the term "net income" is used in Section 104 of the Revenue Act of 1928, the Commissioner has erroneously determined that the amount of dividends received by the petitioner was $2,217,331.68 and has erroneously increased the petitioner's net income as defined in Section 21 of the Revenue Act of 1928 by an amount of $2,217,331.68 representing the

dividend deduction under Section 23(p) of the Revenue Act of 1928.

(4)(i) In determining the petitioner's net income for the year 1932, as the term "net income" is used in Section 104 of the Revenue Act of 1932, the Commissioner has erroneously determined that the amount of dividends received by the petitioner was $2,216,260.35 and has erroneously increased the petitioner's net income as defined in Section 21 of the Revenue Act of 1932 by an amount of $2,216,260.35 representing the dividend deduction under Section 23(p) of the Revenue Act of 1932.

(4)(j) In determining the petitioner's net income for the year 1933, as the term "net income" is used in Section 104 of the Revenue Act of 1932, the Commissioner has erroneously determined that the amount of dividends received by the petitioner was $2,197,221.52 and has erroneously increased the petitioner's net income as defined in Section 21 of the Revenue Act of 1932 by an amount of $2,197,221.52 representing the dividend deduction under Section 23(p) of the Revenue Act of 1932.

(2) By inserting the following three paragraphs numbered (5)(F), (5)(G), and (5)(H) to follow after paragraph (5)(E) in the original petition as filed:

(5)(F) In filing its corporation income tax return for the calendar year 1930, the petitioner erroneously reported as dividends received from domestic corporations the sum of $2,217,531.08 and erroneously took the same amount as a deduction from net income. The Commissioner erroneously determined that the dividends received by the taxpayer for the year 1930 and

the amount of the dividend deduction were $2,217,331.68 as reported by the taxpayer.

The error of the taxpayer and the Commissioner arises from the following facts:

During the year 1930 the taxpayer received distributions from The Chicago Junction Railways and Union Stock Yards Company (hereinafter called the New Jersey Company) in the sum of $1,978,897.68 and included all of said amount in its return as dividends received. However, at least $600,000. of said distribution from the New Jersey Company to the taxpayer during the year 1930 was not made out of earnings or profits accumulated by the New Jersey Company subsequent to February 28, 1913 but was made out of earnings or profits of that company accumulated prior to such date or out of the capital of that company.

(5)(G) In filing its corporation income tax return for the calendar year 1932, the petitioner erroneously reported as dividends received from domestic corporations the sum of $2,216,260.35 and erroneously took the same amount as a deduction from net income. The Commissioner erroneously determined that the dividends received by the taxpayer for the year 1932 and the amount of the dividend deduction were $2,216,260.35 as reported by the taxpayer.

The error of the taxpayer and the Commissioner arises from the following facts:

During the year 1932 the taxpayer received distributions from the New Jersey Company in the sum of $1,996,664.10 and included all of said amount in its return as dividends received. However, at least $600,000. of said distribution from the New Jersey Company to the taxpayer during the

year 1932 was not made out of earnings or profits accumulated by the New Jersey Company subsequent to February 28, 1913 but was made out of earnings or profits of that company accumulated prior to such date or out of the capital of that company.

(5)(H) In filing its corporation income tax return for the calendar year 1933, the petitioner erroneously reported as dividends received from domestic corporations the sum of $2,197,221.52 and erroneously took the same amount as a deduction from net income. The Commissioner erroneously determined that the dividends received by the taxpayer for the year 1933 and the amount of the dividend deduction were $2,197,221.52 as reported by the taxpayer.

The error of the taxpayer and the Commissioner arises from the following facts:

During the year 1933 the taxpayer received distributions from the New Jersey Company in the sum of $1,995,460.44 and included all of said amount in its return as dividends received. However, at least $600,000. of said distribution from the New Jersey Company to the taxpayer during the year 1933 was not made out of earnings or profits accumulated by the New Jersey Company subsequent to February 28, 1913 but was made out of earnings or profits of that company accumulated prior to such date or out of the capital of that company.

J N Welch, *Counsel for Petitioner.*
60 State Street, Boston, Massachusetts.

STATE OF RHODE ISLAND }
COUNTY OF PROVIDENCE } S.S.

August 22, 1938.

Then personally appeared F. R. Pegram who on his oath says, that he is Treasurer of the petitioner in this proceeding, and as such is duly authorized to verify the foregoing petition or has had the same read to him and is familiar with the statements contained therein, and that the facts stated therein are true except as to those facts to be upon information and belief and those facts he believes to be true.

F. R. PEGRAM, *Treasurer*,
Chicago Stock Yards Company.

Subscribed and sworn to before me this 22nd day of August, 1938.

DANA M. SWAN,
Notary Public.

My commission expires June 30, 1941.

[NOTARIAL SEAL.]

[Title omitted.]

ANSWER TO PETITIONER'S AMENDMENT TO PETITION.

[Filed October 13, 1938.]

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to petitioner's amendment to petition admits and denies as follows:

(1) (4)(h) to (j), inclusive. Denies the allegations of fact and assignments of error contained in subparagraphs

(4)(h) to (j), inclusive, of paragraph (1) of petitioner's amendment to petition.

(2) (5)(f) to (h), inclusive. Denies the allegations of fact and assignments of error contained in subparagraphs (5)(f) to (h), inclusive, of paragraph (2) of petitioner's amendment to petition.

Denies generally and specifically each and every allegation set forth in petitioner's amendment to petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the taxpayer's appeal be denied.

J. P. WENCHEL, *Chief Counsel,*
Bureau of Internal Revenue.

Of Counsel:

PHILIP M. CLARK,
TIMOTHY G. HISTON,
Special Attorneys,
Bureau of Internal Revenue.

[Title omitted.]

STIPULATION OF FACTS.

[Admitted in Evidence Feb. 9, 1939.]

It is hereby stipulated and agreed by and between the parties to the above action that the facts and figures contained in this stipulation and the exhibits which accompany it are true; without prejudice to the right of either party to introduce other and further evidence not inconsistent herewith.

1. THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO (hereinafter referred to as Transit Co.) is a corporation duly organized under special act of Illinois legis-

lature dated February 13, 1865. A copy of said statute accompanies this stipulation and is marked S-1. The capital stock authorized by its charter was $1,000,000. divided into 10,000 shares of a par value of $100. each. This authorized capital stock was increased by amendments to its charter as follows:

To $1,500,000. on March 7, 1867

To $4,400,000. on June 2, 1876

To $13,200,000. on July 3, 1890

The books of the Transit Co. containing the entries relative to such increases are not in existence. Such records as are available relative to such increases are attached marked S-2 and S-2A.

Section 10 of the Charter has never been amended.

All of said stock was represented by shares of a par value of $100. and was issued prior to 1911.

During the years 1911, 1912 and 1913 over 98% of the capital stock of this company was owned by the Chicago Junction Railways and Union Stock Yards Company, a New Jersey corporation, (hereinafter referred to as the New Jersey Co.); and after December 31, 1913 up to the present date this company was a wholly owned subsidiary of the New Jersey Co.

A statement showing the income received and dividends paid by the Transit Co. for the years 1911 to 1933 inclusive accompanies this stipulation and is marked S-3. Balance sheets of the Transit Co. as of December 31 of each year from 1911 to 1933 inclusive accompany this stipulation and are marked S-4.

The surplus of the Transit Co. as shown in S-4 is according to the books. It is agreed that the following adjustments should be made in the surplus account of the Transit Co. as shown by its books as set forth in S-4, in order that

said account may reflect a correct statement of earned surplus under the applicable Revenue Acts.

The surplus account of the Transit Co. as shown by its books as set forth in S-4, should be decreased by the following sums on the dates noted: December 31, 1930—$16,712,750.42; December 31, 1931—$16,537,331.81; December 31, 1932—$16,360,068.12 and December 31, 1933—$16,117,657.46. These decreases should be made to eliminate assets which were written up with an offsetting credit to surplus.

The surplus account of the Transit Co. as shown by its books as set forth in S-4, should be increased for each such year by the sum of $2,707,136.07, of which $1,397,821.09 reflects a transfer to this account of the reserve for new construction, and $1,309,314.98 represents a restoration for plant assets charged to expense in prior years.

On the balance sheets of the Transit Co., which are S-4 attached to this stipulation, the following intercompany items existed in addition to those so identified on the balance sheets.

Balance Sheet as of December 31, 1929.

The item "Accounts and Other Notes Receivable" includes the following:

Due from *Railway Co.	$1,041.66
Due from *C.M.D.	19.68
Due from New Jersey Co.	82,500.00

The item "Debenture Notes" includes bonds of the Transit Co. of a face value of $15,000, owned by the Maine Co.

Balance Sheet as of December 31, 1930.

The item "Accounts and Other Notes Receivable" includes the following:

Due from Railway Co.	$ 1,041.66
Due from C. M. D.	54.73
Due from New Jersey Co.	97,500.00

*Full name is Chicago Junction Railway Company.
*Full name is Central Manufacturing District.

Balance Sheet as of December 31, 1931:

The item "Accounts and Other Notes Receivable" includes the following:

Due from Railway Co.	$ 1,041.66
Due from C. M. D.	112.99
Due from New Jersey Co.	112,500.00

Balance Sheet as of December 31, 1932.

The item "Accounts and Other Notes Receivable" includes the following:

Due from Railway Co.	$ 1,041.66
Due from C. M. D.	177.22
Due from Central Storage & Forwarding Co.	58.80
Due from New Jersey Co.	127,500.00

Balance Sheet as of December 31, 1933.

The item "Accounts and Other Notes Receivable" includes the following:

Due from Railway Co.	$ 1,041.66
Due from C.M.D.	595.06
Due from Central Storage & Forwarding Co.	78.58
Due from New Jersey Co.	142,500.00

During each of the years 1921 to 1931 inclusive a portion of the income of the Transit Co. received for reweighing charges was impounded and held in a special fund in the name of the Transit Co. subject to a determination of a rate hearing of the Department of Agriculture. On April 15, 1930 a decision sustaining the charges was rendered; and in 1932 the impounded income and bank interest earned thereon, amounting in the aggregate to $2,426,433.29, was included in income upon the books of the Transit Co. for that year. In its balance sheet for each of the years 1921 to 1931 inclusive the amount of such impounded cash and bank interest credited to the end of the year was included

in the item "Cash"; and on the liability side the amount of such impounded income and interest was included in the item "Clearing Account". The amount of such income received and impounded and the interest thereon for each year from 1921 to 1931 inclusive and the total amount of the impounded income and interest on hand at the end of each such year is as follows:

	Impounded Income and Interest thereon during Year	Total Impounded Income and Interest at End of Year
1921	$ 33,655.10	$ 33,655.10
1922	206,185.85	239,840.95
1923	191,260.90	431,101.85
1924	330,098.87	761,200.72
1925	288,819.76	1,050,020.48
1926	257,946.52	1,307,967.00
1927	239,166.97	1,547,133.97
1928	233,662.53	1,780,796.50
1929	232,727.04	2,013,523.54
1930	200,263.28	2,213,786.82
1931	212,646.47	2,426,433.29
1932	0.	0.

2. The Stock Yards Harness and Saddlery Company (hereinafter referred to as Harness and Saddlery Co.) is a corporation duly organized prior to January 1, 1911. At all times material to this case this company was a wholly owned subsidiary of the Transit Co.

A statement showing the income received and dividends paid for the years 1911 to 1933 inclusive accompanies this stipulation and is marked S-5. Balance sheets of the Harness and Saddlery Co. as of December 31 of each year from 1911 to 1933 inclusive accompany this stipulation and are marked S-6.

3. The Chicago Junction Railway Company (hereinafter referred to as Railway Co.) is a corporation duly organized under Illinois law on April 26, 1898.

Prior to the formation of this company, the New Jersey Co. owned all of the capital stock of two corporations, (1) the Chicago Hammond & Western Railroad Company which owned a belt line railroad (known as the "Outer Belt") in Chicago and its vicinity, and (2) the Chicago & Indiana State Line Railway Company which operated another belt line railroad (known as the "Inner Belt") in the same vicinity directly serving the Chicago Stock Yards, under lease from the Transit Co. dated December 15, 1897, a copy of which lease is attached marked S-7. The Railway Co. was organized as a consolidation of the foregoing two railroad companies with an authorized capital stock of $2,200,000, divided into 22,000 shares of a par value of $100. each. This stock was all issued. The authorized capital stock was increased December 10, 1913 to $5,500,000, consisting of 55,000 shares of a par value of $100. each; and the additional 33,000 shares so authorized were declared and paid as a stock dividend in 1913 to the New Jersey Co. The Railway Co. was at all times a wholly owned subsidiary of the New Jersey Co.

In 1907 the Railway Co. sold the "Outer Belt" to Indiana Harbor Belt Railway Company receiving bonds of the latter company maturing in 1957 of a par value of $2,500,000. These bonds were guaranteed by Lake Shore & Michigan Railroad Company and Michigan Central Railroad Company and bore interest at the rate of 2% until 1912, 3% until 1917, and 4% thereafter. These bonds were taken in by the Railway Co. according to its books at a value of $2,286,427.84. The trustee under a Mortgage and Deed of Trust executed by the New Jersey Co. on April 10, 1900 (a copy of which accompanies this stipulation marked S-24) demanded that said bonds be deposited as additional collateral security under said Mortgage and Deed of Trust; and these bonds were delivered to the trustee and are still

held by the trustee as such collateral. Upon delivery of these bonds to the trustee the Railway Co. wrote them off its books and wrote up the value of its remaining assets by the same amount, namely, $2,286,427.84. These bonds were not entered upon the books of the New Jersey Co. as an asset, and have never been so carried. The New Jersey Co. paid a commission of $50,000. upon the sale of the "Outer Belt" and carries upon its books and in its balance sheets the item "Indiana Harbor Belt R. R. Co. Bonds—$50,000."

On December 1, 1913 the Transit Co. and the Railway Co. entered into a lease, a copy of which is attached as Exhibit D. to an Indenture of Lease entered into on May 19, 1922 between the Railway Co., the Transit Co., The Chicago River and Indiana Railroad Co., and the New York Central Railroad Company. The said leases may be introduced in evidence at the hearing.

A statement showing the income received and dividends paid by the Railway Co. for the years 1911 to 1933 inclusive accompanies this stipulation and is marked S-8. Balance sheets of the Railway Co. as of December 31 of each year from 1911 to 1933 inclusive accompany this stipulation and are marked S-9. Up to the present date the Railway Co. has been a wholly owned subsidiary of the New Jersey Co.

The surplus of the Railway Co. as shown in Exhibit S-9 is according to the books. It is agreed that the following adjustments should be made to the surplus account of the Railway Co. as shown by its books as set forth in S-9, in order that said account may reflect a correct statement of earned surplus under the applicable Revenue Acts.

The surplus of the Railway Co. on December 31, 1930, 1931, 1932 and 1933, as shown by its books as set forth in S-9, should be decreased by $2,286,427.84 representing a

write-up of the value of "Inner Belt" credited to surplus account in the year 1907.

For each of said years the surplus of the Railway Co. as shown by its books as set forth in S-9, on December 31 should be increased by the sum of $3,775,561. of which $3,300,000. represents a stock dividend declared and paid by it in 1913 to the New Jersey Co. and $475,561. represents additions and betterments charged to expense in years prior to 1918.

On each of the balance sheets of the Railway Co., which are S-9 attached to this stipulation, for December 31, 1929, 1930, 1931, 1932 and 1933 the item "Accounts Payable" includes $1,041.66 due from the Railway Co. to the Transit Co.

4. The Chicago Junction Railroad Company (hereinafter referred to as Railroad Co.) is a corporation duly organized under Illinois law on November 20, 1902. On September 30, 1903 the Railroad Co. entered into a lease with the South Side Elevated Railroad Company, a copy of which accompanies this stipulation and is marked S-10. Under date of March 1, 1905 the Railroad Co. issued $2,327,000. 4% First Mortgage Bonds due March 1, 1945 under a First Mortgage which accompanies this stipulation and is marked S-11.

A statement showing the income received for the years 1911 to 1933 inclusive of the Railroad Co. accompanies this stipulation and is marked S-12. Balance sheets of the Railroad Co. as of December 31 of each year from 1911 to 1933 accompany this stipulation and are marked S-13.

The Railroad Co. was at all times a wholly owned subsidiary of the New Jersey Co.

The deficit of the Railroad Co. as shown in Exhibit S-13 is according to the books as set forth in S-13. It is agreed that the following adjustments should be made in the deficit

account of the Railroad Co. as shown by its books, in order that said account may reflect a correct statement of its deficit under the applicable Revenue Acts.

The deficit account of the Railroad Co. as shown by its books as set forth in S-13, should be decreased by the following sums on the dates noted: December 31, 1930—$530,458.62; December 31, 1931—$558,209.86; December 31, 1932—$585,961.02 and December 31, 1933—$613,712.22. These decreases should be made to restore to surplus the depreciation charged off on the books of the Railroad Co. in excess of that allowed by the Bureau of Internal Revenue in the determination of its taxable income.

5. The Produce Terminal Corporation (hereinafter referred to as Produce Terminal Corp.) is a corporation duly organized under Illinois law on March 4, 1915. Prior to the formation of this company, the business which it had been formed to carry on was carried on by the Transit Co. From the date of its formation until 1921 this company was a wholly owned subsidiary of the Transit Co. In 1921 the Transit Co. distributed all the shares of the Produce Terminal Corp. to the New Jersey Co. as a dividend; and on December 31, 1926 the New Jersey Co. distributed said shares to the petitioner, the Chicago Stock Yards Company (hereinafter referred to as the Maine Co.), as a dividend. Since December 31, 1926 the Produce Terminal Corp. has been a wholly owned subsidiary of the Maine Co.

The capital stock of the Produce Terminal Corp. at the time of its incorporation was $1,000. consisting of 10 shares of a par value of $100. each. This authorized capital stock was increased as follows:

On November 16, 1915 to $200,000. consisting of 2,000 shares of a par value of $100. each

On January 29, 1919 to $250,000. consisting of 2,500 shares of a par value of $100. each

On September 20, 1919 to $300,000, consisting of 3,000 shares of a par value of $100. each

On November 12, 1921 to $500,000, consisting of 5,000 shares of a par value of $100. each

On June 3, 1927 to $2,000,000, consisting of 20,000 shares of a par value of $100. each

A statement showing the income received and the dividends paid for the years 1916 to 1933 inclusive accompanies this stipulation and is marked S-14. Balance sheets of the Produce Terminal Corp. as of December 31 of each year from 1916 to 1933 inclusive accompany this stipulation and are marked S-15.

The surplus of the Produce Terminal Corp. as shown in Exhibit S-15 is according to the books. It is agreed that the following adjustments should be made in the surplus account of the Produce Terminal Corp. as shown by its books, in order that said account may reflect a correct statement of earned surplus under the applicable Revenue Acts.

The surplus of the Produce Terminal Corp. as shown by its books as set forth in S-15, on December 31, 1930, 1931, 1932 and 1933 should be decreased by the sum of $370,865.47 representing a write-up of the value of capital assets in earlier years.

For each of said years the surplus on December 31 of the Produce Terminal Corp. as shown by its books as set forth in S-15, should be increased by the sum of $717,000. representing a stock dividend of said amount declared and paid in 1927 to the Maine Co.

6. The Chicago Junction Railways and Union Stock Yards Company (herein referred to as New Jersey Co.) is a Corporation duly organized under New Jersey law on July 10, 1890. A copy of its charter and all amendments to it accompany this stipulation marked S-16. Upon its forma

tion the New Jersey Co. acquired all of the capital stock of the Transit Co. with the exception of a few shares amounting to less than 2% thereof; and by the latter part of 1913 the New Jersey Co. owned all of the capital stock of the Transit Co.

(a) Under date of July 10, 1890 the New Jersey Co. issued $10,000,000. 5% Collateral Trust Gold Bonds due July 1, 1915 under a Deed of Trust which accompanies this stipulation and is marked S-17.

(b) On January 15, 1892 the New Jersey Co. entered into an Agreement with Philip D. Armour, Nelson Morris, Gustavus F. Swift and others, a copy of which accompanies this stipulation and is marked S-18. The amount required by this Agreement to be paid by the New Jersey Co. to the other contracting parties, namely, $3,000,000. in bonds, was paid by the issuance of the bonds referred to in the following paragraph (c) of this stipulation.

(c) Under date of June 15, 1892 the New Jersey Co. issued $3,000,000. 5% Non-Cumulative Income Bonds under a Trust Agreement of said date, a copy of which accompanies this stipulation and is marked S-19.

(d) On June 23, 1892 the New Jersey Co. entered into an Agreement with Henry Botsford and others, a copy of which accompanies this stipulation and is marked S-20. The amount required to be paid under this Agreement, namely, $100,000. in cash and $300,000. in bonds, was paid by the New Jersey Co. to the other contracting parties.

(e) Under date of January 24, 1898 the New Jersey Co. issued $400,000. 5% notes under a Collateral Trust Agreement of said date, a copy of which accompanies this stipulation and is marked S-21.

(f) On December 7, 1899 the New Jersey Co. entered into an Agreement with Schwarzschild & Sulzberger Company,

a copy of which accompanies this stipulation and is marked S-22. The amount required to be paid by the terms of this Agreement by the New Jersey Co., namely, $500,000. in cash, was paid by the New Jersey Co. to the other contracting party; and the New Jersey Co. paid to the other party $40,000. in cash in lieu of conveying to it the land referred to in the Agreement.

(g) On April 1, 1901 the New Jersey Co. entered into an Agreement with Anglo-American Provision Company upon terms similar to those contained in S-23 (hereinafter referred to) with the exception that the amount required to be paid and which was paid by the New Jersey Co. to the Anglo-American Provision Company in accordance with the Agreement was cash $200,000. and land worth $25,000. Neither the original nor any copy of this Agreement can be found.

(h) On November 9, 1901 the New Jersey Co. entered into an Agreement with The G. H. Hammond Company, a copy of which accompanies this stipulation and is marked S-23. The amount required by this Agreement to be paid by the New Jersey Co. to the other contracting party, namely, $500,000., was paid by the New Jersey Co. to the other contracting party.

(i) Under date of April 10, 1900 the New Jersey Co. executed a Mortgage and Deed of Trust authorizing an issue of $14,000,000. 4% Forty-Year Mortgage and Collateral Trust Bonds. $4,000,000. of said bonds were issued at that time. At that time $2,465,000. face value of the $3,000,000. bonds which had been issued by the New Jersey Co. on June 15, 1892 and the $400,000. notes issued January 24, 1898 were outstanding. $2,465,000. of the proceeds received from the issuance of said $4,000,000. face value of bonds of 1900 were used to retire said 1892 bonds; $400,000. of the proceeds to retire said $400,000. notes; and the remaining pro-

ceeds of the $4,000,000. were devoted to corporate purposes. The remaining $10,000,000. face value of bonds authorized were not then issued but were reserved to retire the $10,000,000. bonds issued July 10, 1890.

A copy of said Mortgage and Deed of Trust dated April 10, 1900 accompanies this stipulation and is marked S-24.

(j) Under date of April 1, 1915 the New Jersey Co. executed a Supplemental Mortgage and Deed of Trust, a copy of which accompanies this stipulation and is marked S-25. This supplemented the Mortgage and Deed of Trust of April 10, 1900. The $10,000,000. face value of bonds issued under the April 10, 1900 Mortgage and Deed of Trust and the April 1, 1915 Supplement were used to retire the $10,000,000. face value of bonds of this company issued on July 10, 1890.

(k) A statement showing the income received and dividends paid by the New Jersey Co. for the years 1911 to 1933 inclusive accompanies this stipulation and is marked S-26. Balance sheets of the New Jersey Co. as of December 31 of each year from 1911 to 1933 inclusive accompany this stipulation and are marked S-27.

The surplus of the New Jersey Co. as shown in S-27 is according to the books. It is agreed that the following adjustments should be made in the surplus of the New Jersey Co. as shown by its books, in order that said account may reflect a correct statement of earned surplus under the applicable Revenue Acts.

The surplus of the New Jersey Co. on December 31, 1930 as shown by its books as set forth in S-27 should be increased in the amount of $6,974,529.93 (of which $2,104,000. represents a write-down of value of capital stock of the Transit Co. in 1913; $2,036,427.84 represents bonds of the Indiana Harbor Belt Railroad Company not carried on the books of the New Jersey Co.; $2,436,462.84 represents in-

come upon the sale of real estate by the New Jersey Co. to C. M. D. for additional certificates of beneficial interest in the latter in 1916, which income was credited to premium reserve and so carried in S-27; $168,441.85 represents unamortized bond discount previously charged off the books of the New Jersey Co. and $229,197.40 represents a profit from the sale of land prior to 1911 which was credited through error into another account).

The surplus of the New Jersey Co. on December 31, 1930 as shown by its books as set forth in S-27 should be decreased by the amount of $5,121,204.50 (of which $1,821,204.50 represents a write-up of capital stock of the Transit Co. in 1904 and $3,300,000 represents a stock dividend received from the Railway Co. in 1913).

The surplus of the New Jersey Co. on December 31, 1931 as shown by its books as set forth in S-27 should be increased in the amount of $6,956,091.95 (including the items of $2,104,000.; $2,036,427.84; $229,197.40 and $2,436,462.84 previously referred to and also including an item of $150,003.87 representing unamortized bond discount previously charged off the books of the New Jersey Co.).

The surplus of the New Jersey Co. on December 31, 1931 as shown by its books as set forth in S-27 should be decreased by the amount of $5,121,204.50 (of which $1,821,204.50 represents a write-up of capital stock of the Transit Co. in 1904 and $3,300,000 represents a stock dividend received from the Railway Co. in 1913).

The surplus of the New Jersey Co. on December 31, 1932 as shown by its books as set forth in S-27 should be increased in the amount of $6,937,653.97 (including the items of $2,104,000.; $2,036,427.84; $229,197.40 and $2,436,462.84 referred to previously and also including an item of $131,565.89 representing unamortized bond discount previously charged off the books of the New Jersey Co.).

The surplus of the New Jersey Co. on December 31, 1932 as shown by its books as set forth in S-27 should be decreased by the amount of $5,121,204.50 (of which $1,821,204.50 represents a write-up of capital stock of the Transit Co. in 1904 and $3,300,000. represents a stock dividend received from the Railway Co. in 1913).

The surplus of the New Jersey Co. on December 31, 1933 as shown by its books as set forth in S-27 should be increased in the amount of $6,919,215.99 (including the items of $2,104,000.; $2,036,427.84; $229,197.40 and $2,436,462.84 previously referred to and also including an item of $113,127.91 representing unamortized bond discount previously charged off the books of the New Jersey Co.).

The surplus of the New Jersey Co. on December 31, 1933 as shown by its books as set forth in S-27 should be decreased in the amount of $5,121,204.50 (of which $1,821,204.50 represents a write-up of capital stock of the Transit Co. in 1904 and $3,300,000. represents a stock dividend received from the Railway Co. in 1913).

On the balance sheets of the New Jersey Co. which are S-27 attached to this stipulation, the following intercompany items existed in addition to those so identified on said balance sheets.

Balance Sheet as of December 31, 1929.

The item "Accounts Payable" includes $82,500. due to Transit Co. and the item "Notes Payable $300,000." represents a note due to the Transit Co.

Balance Sheet as of December 31, 1930.

The item "Accounts Payable" includes $97,500. due to Transit Co. and the item "Notes Payable $300,000." represents a note due to the Transit Co.

Balance Sheet as of December 31, 1931.

The item "Accounts Payable" includes $112,500. due to Transit Co. and the item "Notes Payable $300,000." represents a note due to the Transit Co.

Balance Sheet as of December 31, 1932.

The item "Accounts Payable" includes $127,500. due to Transit Co. and the item "Notes Payable $300,000." represents a note due to the Transit Co.

Balance Sheet as of December 31, 1933.

The item "Accounts Payable" includes $142,500. due to Transit Co. and the item "Notes Payable $300,000." represents a note due to the Transit Co.

(1) A statement showing the amount of dividends received by holders (other than the Maine Co.) of guaranteed common stock and of preferred stock of the New Jersey Co. for the years 1911 to 1933 accompanies this stipulation marked S-28.

At all times the authorized and issued capital stock of the New Jersey Co. consisted of 65,000 shares of preferred stock of a par value of $100. each and 65,000 shares of common stock of a par value of $100. each. The holder of each share of each class was entitled to one vote.

It is agreed that the Federal tax returns filed by the New Jersey Co. for any or all years prior to 1934 may be introduced in evidence.

7. Central Manufacturing District (hereinafter referred to as C. M. D.) is a real estate trust with transferrable shares. The trust was originally created by a transfer to Spoor and Winston, Trustees under a deed dated May 2, 1902, a copy of which is attached marked S-29. On that date it held title to real estate in Chicago adjacent to the Stock Yards. The form of organization was a trust

of which John A. Spoor and Frederick S. Winston were trustees and under which the New Jersey Co. was sole beneficiary. The trust received conveyances of additional land on March 1, 1907 and on February 1, 1908.

Under date of May 1, 1907 the New Jersey Co. issued $2,000,000. 5% bonds under a Mortgage and Deed of Trust, a copy of which Mortgage and Deed of Trust accompanies this stipulation and is marked S-30. The proceeds of these bonds were paid to C. M. D.

Under date of March 1, 1908 the New Jersey Co. issued $3,000,000. 5% bonds under a Mortgage and Deed of Trust, a copy of which Mortgage and Deed of Trust accompanies this stipulation and is marked S-31. A portion of the proceeds of said bonds was used to retire the bonds issued May 1, 1907; and the rest was paid to C. M. D.

On February 1, 1916 an Indenture and Declaration of Trust was executed, a copy of which Indenture and Declaration is attached marked S-32, which was in substitution for the terms of the original trust deed. The February 1, 1916 Indenture has five amendments marked S-32(A), S-32(B), S-32(C), S-32(D), and S-32(E) respectively. Under said Indenture and Declaration and said amendments, the New Jersey Co. was the sole owner of the shares of C. M. D.

Under date of February 25, 1916 an Indenture of Trust was executed, a copy of which accompanies this stipulation and is marked S-33.

$3,000,000. Series A 5% Bonds were immediately issued. A portion of the proceeds were used to retire all bonds issued on March 1, 1908 which were then outstanding. The Series A bonds matured $120,000. on March 1 of each year 1917 to 1941 inclusive. Further bonds were issued under said Indenture of Trust maturing as follows:

$1,000,000. Series B 5's dated March 1, 1916 maturing serially $40,000. each year from March 1, 1917 to 1941 inclusive.

$ 330,000. Series B 5's dated March 1, 1919 maturing serially $30,000. on March 1, 1931, $40,000. each year from March 1, 1932 to March 1, 1938 inclusive, and $20,000. on March 1, 1939.

$1,000,000. Series B 5½'s dated March 1, 1923 maturing serially $25,000. a year from March 1, 1924 to 1940 inclusive and $575,000. on March 1, 1941

$ 989,000. Series B 6's dated March 1, 1920 maturing serially $20,000. each year from March 1, 1921 to March 1, 1929 inclusive and $809,000. on March 1, 1930

A statement showing the income received and dividends paid by C. M. D. for the years 1911 to 1933 inclusive accompanies this stipulation and is marked S-34. Balance sheets of C. M. D. as of December 31 of each year from 1911 to 1933 inclusive accompany this stipulation and are marked S-35.

The surplus of C. M. D. as shown in S-35 is according to the books. It is agreed that the following adjustments should be made in the surplus account of the C. M. D. as shown by its books, in order that said account may reflect a correct statement of earned surplus under the applicable Revenue Acts.

The surplus account of C. M. D. as shown by its books as set forth in S-35 should be increased by the following sums on the dates noted: December 31, 1930—$179,166.60; December 31, 1931—$187,500.; December 31, 1932—$187,500. and December 31, 1933—$187,500. all representing a bond sinking fund reserve.

On the balance sheets of C. M. D. which are S-35 attached to this stipulation, the following intercompany items existed in addition to those so identified on the balance sheets.

Balance Sheet as of December 31, 1929.

The item "Accounts Payable" includes $19.68 due to Transit Co.

The item "Bonds" includes bonds of a par value as follows:

Held by the Maine Co.	$83,000.

Balance Sheet as of December 31, 1930.

The item "Notes Payable" includes $200,000. due to New Jersey Co.

The item "Accounts Payable" includes the following:

Due to New Jersey Co.	$ 3,788.89
Due to Transit Co.	54.73
Due to Maine Co.	800,000.00

The item "Bonds" includes bonds of a par value of $49,000. held by the Maine Co.

Balance Sheet as of December 31, 1931.

The item "Accounts and Notes Receivable" includes an account receivable of $29,113.04 due from Central Storage & Forwarding Corp.

The item "Notes Payable" includes $200,000. due to New Jersey Co.

The item "Accounts Payable" includes the following:

Due to New Jersey Co.	$ 3,788.89
Due to Transit Co.	112.99
Due to Maine Co.	800,000.00

The item "Bonds" includes bonds of a par value of $47,000. held by the Maine Co.

Balance Sheet as of December 31, 1932.

The item "Accounts and Notes Receivable" includes an account receivable of $74,540.13 due from Central Storage & Forwarding Corp.

The item "Notes Payable" includes $200,000. due to New Jersey Co.

The item "Accounts Payable" includes the following:

Due to New Jersey Co.	$ 3,788.89
Due to Transit Co.	177.22

There is also included partly in "Accounts Payable" and partly in "Notes Payable" a total of $1,350,000. due to the Maine Co.

The item "Bonds" includes bonds of a par value of $41,000. held by the Maine Co.

Balance Sheet as of December 31, 1933.

The item "Accounts and Notes Receivable" includes an account receivable of $11,167.98 due from Central Storage & Forwarding Corp.

The item "Notes Payable" includes the following:

Due to New Jersey Co.	$ 200,000.00
Due to Maine Co.	1,625,000.00

The item "Accounts Payable" includes the following:

Due to Transit Co.	$ 595.06
Due to New Jersey Co.	14,788.89

The item "Bonds" includes bonds of a par value of $31,000. held by the Maine Co.

8. C. M. D. became the owner of all the capital stock of the CENTRAL STORAGE CORPORATION, an Illinois corporation, on June 6, 1931 and on the same day became the owner of all the capital stock of CENTRAL STORAGE AND FORWARDING CORPORATION, an Illinois corporation. On December 31, 1931 the Central Storage Corporation was merged into the Central Storage and Forwarding Corporation; and at all times after June 6, 1931 the C. M. D. has been the sole owner of all the capital stock of the Central Storage and Forwarding Corporation.

Statements showing the income received for the period from June 6, 1931 to December 31, 1931 by the Central Storage Corporation and for the period from June 6, 1931 to

December 31, 1933 inclusive by the Central Storage and Forwarding Corporation accompany this stipulation marked S-36. Balance sheets as of December 31, 1931 of the Central Storage Corporation and as of December 31 of each year from 1931 to 1933 inclusive of the Central Storage and Forwarding Corporation accompany this stipulation marked S-37.

CENTRAL STORAGE

Balance Sheet as of December 31, 1931.

The item "Accounts Payable" includes $2,353.89 due to Central Storage & Forwarding Corp.

CENTRAL STORAGE & FORWARDING CORP.

Balance Sheet as of December 31, 1931.

The item "Accounts and Notes Receivable" includes an account receivable of $2,353.89 due from Central Storage.

The item "Accounts Payable" includes $29,113.04 due to C. M. D.

Balance Sheet as of December 31, 1932.

The item "Accounts Payable" includes the following:

Due to Transit Co.	$ 58.80
Due to C. M. D.	74,540.13

Balance Sheet as of December 31, 1933.

The item "Accounts Payable" includes the following:

Due to Transit Co.	$ 78.58
Due to C. M. D.	11,167.98

9. The petitioner, CHICAGO STOCK YARDS COMPANY (hereinafter referred to as the Maine Co.) is a corporation duly organized under Maine Law on September 26, 1911. A copy of its charter with the only amendment thereto filed November 11, 1911 accompanies this stipulation and is marked S-38. This corporation was formed in pursuance of a Plan dated June

30, 1911, a copy of which with forms of assents thereto accompanies this stipulation and is marked S-39.

On September 27, 1911 the Maine Co. entered into an agreement with Frank R. Pegram, a copy of which accompanies this stipulation and is marked S-40. On the same day the Maine Co. entered into an agreement with the Old Colony Trust Company, a copy of which accompanies this stipulation and is marked S-41.

The following journal and cash book entries were made on the books of the Maine Co. at the time of the original issuance of the stock with a par value of $1,000,000.

Date—September 27, 1911
Journal 1, Page 1
Debit F. R. Pegram $1,000,000.
Credit Capital Stock $1,000,000.
Explanation: 10,000 shares at $100. in part payment of benefits acquired under Agreement of September 27, 1911 in accordance with vote of directors that date.

Date—September 27, 1911
Cash Book 1, Page 1
Debit Cash $1,000,000.
Credit F. R. Pegram $1,000,000.
Explanation: In accordance with the provisions of an Agreement dated September 27, 1911—$1,000,000.

On October 2, 1911, an Indenture of Trust was executed by the Maine Co., a copy of which accompanies this stipulation marked S-42.

Prior to 1914 all of the common stockholders of the New Jersey Co. (with the exception of the holder of 3 shares) had, as set forth in S-43 accompanying this stipulation and in accordance with the Plan, either deposited their stock to be stamped with the guaranty provided for in the Plan or exchanged their stock for the 5% bonds of the Maine Co. issued under said Indenture of October 2, 1911. Common stockholders of the New Jersey Co. who had deposited their stock to be stamped with the guaranty provided for in the

Plan received common stock certificates with the guaranty endorsed thereon. A specimen of such common stock certificate of the New Jersey Co. accompanies this stipulation marked S-44. A specimen preferred stock certificate of the New Jersey Co. accompanies this stipulation marked S-45. The holder of 3 shares of common stock of New Jersey Co. neither deposited his stock to be stamped nor exchanged it for bonds prior to July 1919; but at that time the 3 shares of such stockholder were acquired by the Maine Co.

On October 1, 1914 the Maine Co. and the New Jersey Co. entered into an agreement, a copy of which accompanies this stipulation and is marked S-46.

Minutes of a meeting of the Executive Committee of the New Jersey Co. held on December 4, 1914 relating to said agreement accompany this stipulation marked S-47.

Minutes of a meeting of the Stockholders of the New Jersey Co. held on February 9, 1915 relating to said agreement accompany this stipulation marked S-48.

On October 15, 1921 the Maine Co. issued $1,500,000. face value Ten-Year 7% Serial Debentures under an Indenture, a copy of which accompanies this stipulation and is marked S-49. These bonds were issued to F. H. Prince & Co. in partial payment at par of a debt then owed by the Maine Co. to F. H. Prince & Co. Under date of June 1, 1922 the Maine Co. issued $2,000,000. face value Ten-Year 7% bonds under an Indenture, a copy of which accompanies this stipulation and is marked S-50. $1,500,000. face value of the issue of June 1, 1922 was used to retire the issue of October 15, 1921 and the remaining $500,000. was issued to F. H. Prince & Co. in partial payment at par of a debt then owed by the Maine Co. to F. H. Prince & Co. Said $2,000,000. face value of bonds dated June 1, 1922 were reacquired by the company for $1,860,000. in December 1922.

A statement showing the income received and dividends

paid by the Maine Co. for the years 1911 to 1933 inclusive accompanies this stipulation and is marked S-51. Balance sheets of the Maine Co. as of December 31 of each year from 1911 to 1933 inclusive accompany this stipulation and are marked S-52.

The surplus of the Maine Co. as shown in S-52 is according to the books. It is agreed that the following adjustments should be made in surplus account of the Maine Co. as shown by its books in order that said account may reflect a correct statement of earned surplus under the applicable Revenue Acts.

The surplus of the Maine Co. on December 31, 1930, 1931, 1932 and 1933 as shown by its books as set forth in S-52 should be increased by $7,000,000. representing the amount charged to surplus in conformity with the journal entry of the Maine Co., a copy of which is attached to this stipulation and marked S-53.

For each of said years the surplus on December 31 of the Maine Co. as shown by its books as set forth in S-52 should be increased by $2,228,080. representing a reserve for liability as guarantor charged to surplus in 1924 in conformity with the journal entry of Maine Co., a copy of which is attached to this stipulation marked S-53.

On December 31, 1933 the surplus of the Maine Co. as shown by its books as set forth in S-52 should be increased by $2,235,114.28 representing a reserve for shrinkage in investments charged to surplus on its books in the year 1933.

The surplus of Maine Co. on December 31, 1930, 1931, 1932 and 1933 as shown by its books as set forth in S-52 should be increased by $533,340.66 representing an understatement of value of stock of Produce Terminal Corporation received as a dividend in 1926.

On November 11, 1911 the authorized and issued capital stock of the Maine Co. was increased from $1,000,000. to

$8,000,000. A journal entry made upon the books at the time of such entries accompanies this stipulation and is marked S-54. The capital stock of the Maine Co. on November 11, 1911 was divided into 80,000 shares of common stock with a par value of $100. which were owned as follows:

From November 11, 1911 to June 1922, F. H. Prince was to all intents and purposes the actual owner of 64,480 shares and J. Ogden Armour or Armour & Company was to all intents and purposes the actual owner of 15,520 shares.

The holdings of F. H. Prince were brought to 80,000 shares in June of 1922 when he acquired the 15,520 shares of Maine Co. stock previously owned by J. Ogden Armour or Armour & Company.

From June 1922 to June 3, 1932, 80,000 shares were owned by F. H. Prince. After June 3, 1932, 48,000 shares were owned by F. H. Prince & Co., Inc., a Maine corporation, and 32,000 shares were owned by F. H. Prince. Nothing contained in this paragraph shall prejudice the right of the respondent to contend that the corporate entity of F. H. Prince & Co., Inc., should be disregarded.

At the time when F. H. Prince acquired the 15,520 shares of Maine Co. stock from J. Ogden Armour or Armour & Company, J. Ogden Armour or Armour & Company received the following:

(a) From F. H. Prince, $300,000. in cash and $2,000,000. in bonds of the Maine Co. issued under the Indenture attached hereto marked S-50, which bonds F. H. Prince received from F. H. Prince & Company. Said bonds were reacquired by the Maine Co. from J. Ogden Armour or Armour & Company in December of that year for $1,860,000.

(b) In 1921 Central Manufacturing District, Company was organized under the laws of the State of Delaware

with an authorized capital stock of $800,000. consisting of 8,000 shares of a par value of $100. Under an agreement between the Maine Co. and Central Manufacturing District Company dated May 11, 1922 and an agreement between F. H. Prince, Armour & Company and the Maine Co. dated June 2, 1922 (which agreements are attached hereto marked respectively S-55 and S-56), 6,448 shares of Central Manufacturing District Company were issued to the Maine Co. and 1,552 shares to Armour & Company.

A copy of the plan referred to in S-56 is hereto attached marked S-57.

Said plan was prepared in accordance with the requirements of a decree in the Supreme Court for the District of Columbia in the case of the United States of America v. Swift & Company et als, Docket No. 37623, dated February 27, 1920, a copy of which decree it is agreed may be admitted in evidence.

From 1911 to 1917 Mr. Prince held no position in the Maine Co. On December 13, 1918 he was elected a Director, Vice President and Secretary and served in these positions until October 19, 1921 on which date he resigned as Vice President and Secretary and was elected President. He served as President and Director of this company from October 19, 1921 to the present date.

10. F. H. Prince & Co., Inc. was organized under the laws of Maine on June 1, 1932 with a capital stock authorized of 20,000 shares par value $100. each. On June 1, 1932 F. H. Prince & Co., Inc. exchanged its entire capital stock of 20,000 shares for 48,000 shares of the common stock of the Maine Co. owned by F. H. Prince, F. H. Prince thus receiving the entire capital stock of F. H. Prince & Co., Inc.

11. On June 3, 1932 F. H. Prince transferred and delivered to Trustees under the Deed of Trust dated June 3, 1932, a copy of which accompanies this stipulation marked S-58, the 20,000 shares which he held in F. H. Prince & Co., Inc. Since June 3, 1932 F. H. Prince has owned no stock in F. H. Prince & Co., Inc.

The officers of F. H. Prince & Co., Inc. from June 3, 1932 to December 19, 1932 were as follows:

Brooks Whitehouse, President
John F. Dana, Vice President
Robinson Verrill, Treasurer
John F. Dana, Clerk
John F. Dana, Director
Robinson Verrill, Director
Brooks Whitehouse, Director

From December 19, 1932 to December 31, 1933 the following individuals were officers and directors of F. H. Prince & Co., Inc.:

Frederick H. Prince, President
Frederick H. Prince, Jr., Vice President
James A. McDonough, Treasurer
James A. McDonough, Secretary
John F. Dana, Clerk
Frederick H. Prince, Director
Frederick H. Prince, Jr., Director
Abbie Norman Prince, Director
James A. McDonough, Director
Frank R. Pegram, Director

At all times subsequent to June 3, 1932 the sole stockholders of F. H. Prince & Co., Inc. were the Trustees under the Deed of Trust dated June 3, 1932.

12. There is attached to this stipulation as S-59 a schedule of purchases of New Jersey Co. common stock by the Maine Co.

There is attached to this stipulation as S-60 a schedule of

purchases of New Jersey Co. preferred stock by the Maine Co.

There is attached to this stipulation as S-61 a schedule of bonds issued by the Maine Co. in exchange for New Jersey Co. common.

There is attached to this stipulation as S-62 a schedule of bonds of the Maine Co. reacquired and held in its treasury.

13. The PAU CORPORATION is a corporation duly organized under Illinois law on October 29, 1931. The capital stock of the Pau Corporation consisting of $5,000. was subscribed for in cash by F. H. Prince & Co. The Pau Corporation with money which was loaned to it by the Maine Co. purchased machinery to be used by the Produce Terminal Corp. which machinery as purchased was immediately installed in the plant of the Produce Terminal Corp.

The Maine Co.'s advances to the Pau Corporation for the purpose of purchasing such machinery began in 1932 and amounted to $189,503.34 at the end of that year and amounted on December 31, 1933 to $236,536.51. No interest was paid to the Maine Co. by the Pau Corporation on such advances.

A statement showing the income received by the Pau Corporation for the years 1932 and 1933 accompanies this stipulation and is marked S-63. Balance sheets of the Pau Corporation as of December 31, 1932 and 1933 accompany this stipulation marked S-64.

14. WESTERN ASSOCIATES, INC. is a corporation duly organized under Delaware law in 1933. In January of 1933 it issued 40,000 shares of stock for which the Maine Co. paid $1,500,000. in cash. The Maine Co. has at all times been the

sole owner of all the capital stock of this company. Western Associates, Inc. immediately paid the $1,500,000. for 40,000 shares of the capital stock of Stock Yards Bank & Trust Company, a bank organized under the laws of the State of Illinois and located in the Stock Yards district of Chicago.

In April of 1933 said Stock Yards Bank & Trust Company was reorganized and Western Associates, Inc. received in exchange for the 40,000 shares of the capital stock of the Stock Yards Bank & Trust Company previously held by it 40,000 shares of the capital stock of the Live Stock National Bank of Chicago, which did business in the banking house formerly occupied by Stock Yards Bank & Trust Company. Western Associates, Inc. has owned said shares since that time.

Western Associates, Inc. was formed as a corporation through which the Maine Co. might subscribe to and hold the 40,000 shares of Stock Yards Bank & Trust Company and later of the Live Stock National Bank of Chicago.

Western Associates, Inc. received no income and had no expenses prior to December 31, 1933.

15. At all material times F. H. Prince was the sole owner and proprietor of F. H. Prince & Co., a firm engaged in the brokerage and banking business and holding seats on the New York, Boston and Chicago Stock Exchanges.

16. Schedules S-65, S-66 and S-67 showing for the period from December 31, 1911 through December 31, 1933 cash loans and advances from the Maine Co. to F. H. Prince and F. H. Prince & Co. and from F. H. Prince & Co. to the Maine Co.; and loans of securities from the Maine Co. to F. H. Prince and F. H. Prince & Co. accompany this stipulation. A schedule of interest paid from 1923 to 1933 inclusive

by F. H. Prince and F. H. Prince & Co. to the Maine Co. on indebtedness at the rate of 4% per annum accompanies this stipulation marked S-68. A schedule of interest paid by the Maine Co. to F. H. Prince & Co. on indebtedness from 1923 to 1933 inclusive accompanies this stipulation marked S-69; the rate at which such interest was charged was 5½% during the years 1923 and 1924 and 5% during the years 1925, 1926 and 1927.

17. In its tax return filed for the year 1930 the petitioner claimed a deduction from its gross income in the amount of $499,973.08, representing a loss claimed upon the sale in that year of 1,552 shares of capital stock of the Central Manufacturing District Company, a Delaware corporation. This deduction was disallowed by the Commissioner. (See Paragraphs (4)(e) and (5)(C) of the original petition filed in this case). It is agreed that said deduction shall be disallowed.

18. In its tax return filed for the year 1932 the petitioner claimed a deduction from its gross income in the amount of $221,202.03, representing a loss claimed upon the sale in that year to F. H. Prince & Co., Inc. of 3,050 shares of capital stock of Stock Yards National Bank and 240 shares of capital stock of Central Manufacturing District Bank. This deduction was disallowed by the Commissioner. (See Paragraphs (4)(f) and (5)(D) of the original petition filed in this case). It is agreed that said deduction shall be allowed.

19. It is agreed that the petitioner is entitled to a deduction from gross income of 1932 (not claimed by it in its return for the year 1932) in the amount of $24,000., representing an assessment in that year by the banking authorities of the State of Illinois against and upon 240 shares of

the capital stock of the Central Manufacturing District Bank owned by the petitioner and which assessment the petitioner paid. (See Paragraphs (4)(g) and (5)(E) of the original petition filed in this case.)

20. The stockholders of the Maine Co. did not report any of the undistributed earnings of said company in the years 1930, 1932 and 1933 under the provisions of Sec. 104(d) of the Revenue Acts of 1928 and 1932.

21. It is agreed that the income tax returns of F. H. Prince from 1917 to 1933, inclusive, and F. H. Prince & Co., Inc. for the years 1932 and 1933 may be introduced in evidence.

EDWARD J. KEELAN, JR.,
Counsel for Petitioner.

J. P. WENCHEL,
Counsel for Respondent.

[Title omitted.]

REPORTER'S MINUTES.

[Filed Jan. 31, 1939.]

Hearing at Washington, D. C., on the 30th day of January, 1939, at 9:45 o'clock a. m.

The above-entitled proceeding came on for hearing on this the 30th day of January, 1939, before the HONORABLE JOHN M. STERNHAGEN, Member of the United States Board of Tax Appeals, at Washington, D. C., pursuant to notice of hearing heretofore given; whereupon, the following proceedings were had and testimony heard, to wit:

Appearances:

JOSEPH N. WELCH, Esq., EDWARD J. KEELAN, Esq., LAWRENCE E. GREEN, Esq. (Hale & Dorr, 60 State Street, Boston, Mass.)

JOSEPH K. MOYER, Esq. (1343 H Street, N. W., Washington, D. C.), and

FRANCIS B. KEENEY, Esq. (Swan, Keeney & Smith, 1310 Turks Head Building, Providence, R. I.), appearing on behalf of the Petitioner.

STANLEY B. PIERSON, Esq., and PHILIP M. CLARK, Esq. (HONORABLE J. P. WENCHEL, Chief Counsel, Bureau of Internal Revenue), appearing on behalf of the Commissioner of Internal Revenue, Respondent.

PROCEEDINGS.

The Member: State your appearances, please.

Mr. Welch: For the Petitioner, Mr. J. M. Welch will try. Mr. Lawrence E. Green will be with me, and Mr. Francis B. Keeney, the General Counsel of the Petitioner will

be with me. There are other appearances that we have given to the Clerks in the case.

The Member: But they are not present in the case?

Mr. Welch: They are present. Mr. Edward J. Keelan, also of Boston, will assist, and Mr. Joseph Moyer, of Washington, D. C.

The Member: That is the entire complement of counsel?

Mr. Welch: It is, if Your Honor please.

The Member: And for the Respondent?

Mr. Clark: Philip M. Clark, S. B. Pierson, and A. D. King. Your Honor, we have still a few matters to be ironed out in the way of stipulation. We have been working for a long while on that, and we are not quite finished as yet. May we have an hour or an hour and a half for that?

The Member: How long are you expecting this trial to last, Mr. Welch?

Mr. Welch: It is not easy to say, if Your Honor please. I should think quite clearly a week and might well run into more. I know what Mr. Clark has in mind, and my own feeling would be that we might as well start, if Mr. Clark is willing, and we have never had the slightest difficulty about stipulation. I think something has been left out between one draft and another, and my thought would be to proceed and amend the stipulation as we go along.

Mr. Clark: I think we ought to do that. That would clear the decks at the very beginning.

The Member: Mr. Welch suggests going right ahead now. I would prefer if the case could be begun and I could get your opening statements so that I could have the case in mind. I think, as a matter of fact, very frequently the mere making of opening statements sometimes clears the atmosphere for the perfection of a stipulation, and I would prefer, therefore, if you would make as full opening statements as you can.

Mr. Clark: It is perfectly agreeable with me.

Mr. Welch: Yes.

The Member: Very well. You may proceed, Mr. Welch. I don't want to discourage the complete stipulation of all facts that you gentlemen are ready to agree upon, but I want to go ahead as rapidly as possible.

Mr. Welch: A gigantic stipulation is already agreed upon, and there will be a very trifling amendment to it. Mr. Clark, may I ask if you can see this chart? It is an outline of the different companies which I think will help us in trying the case.

Mr. Clark: Yes, I can see it.

Mr. Welch: I take it, Your Honor sees it readily?

The Member: I can just see the forms but I can see none of the type except the top line. Let's not borrow trouble. I think perhaps I can get along all right.

Mr. Welch: If Your Honor please, there is a duplicate on a smaller scale of the chart that is here which may be easier for you to follow.

The Member: All right, sir.

STATEMENT OF CASE ON BEHALF OF PETITIONER.

Mr. Welch: If Your Honor please, this case that we are starting on is one of the now familiar 104 cases, the question as to whether or not a corporation has been formed or availed of for the purpose of avoiding the imposition of surtax upon shareholders.

When the case began, it had one or two other little issues in it of relatively trifling importance, and those have been disposed of in the stipulation that will be offered to Your Honor, so that we come down to the single 104 question in this case.

As was said to Your Honor, there is a stipulation which is at the moment signed, which I had intended to offer now.

but obviously it is going to have slight amendments to it. It is a bulky document, almost discouragingly so. Its bulk is due to what I think is rare good will on the part of counsel on both sides. I should like to say on behalf of Mr. Clark and Mr. Pierson, that whatever we wished in the stipulation as true went in readily, and I should like to think and hope that we were equally fair on our side, and I wouldn't want to pass the stipulation without saying a word about Mr. A. D. King of the technical staff, who also has a fine regard for anything that is true whether it helps his case or hurts it. And so, in this bulky stipulation, you will find a whole variety of documents and facts agreed upon. Not every one of those papers and documents will be referred to by the Petitioner, and I somewhat doubt if Your Honor's eye or the eye of any Member of the Board will actually light on everything in it, but certainly I think it is fair to say that no material fact that could readily go into a stipulation is missing.

The years in question are the years 1930, 1932, and 1933. No tax was assessed for the year 1931. It involves, as Your Honor knows from the name of the case, the Chicago Stock Yards. Certainly, when counsel began to work on it, it was a case of great complexity. It is my hope that those of us at this table will have succeeded in reducing it at least to manageable proportions, and in this opening it is my hope that I can make clear to Your Honor in a moderately simple way just what the case is and what it is about.

For that purpose, we have prepared and have in the courtroom this chart of which Your Honor has a smaller copy before you, and from that I think I can make the line-up of the several companies perhaps much clearer than I could do so without the chart.

At the top of the chart, in the center of it, is "The Stock Yards Company." That is the Petitioner in this case. That

company is the taxpayer. Throughout the case it will be constantly referred to as the Maine company, M-a-i-n-e and not m-a-i-n, and that word is used naturally because that is the State of its incorporation. It was incorporated in 1911. It had at all times material to this case 80,000 shares of stock outstanding, and it had bonds outstanding to the extent of $2,620,000, that being true as at the end of 1933. The amounts of bonds varies somewhat throughout the case.

In the year 1930, Frederick H. Prince owned all of the capital stock of that company. In 1932, 60 percent of the stock of that company was transferred to a corporation, and the shares in that corporation, in turn, placed in trust by Mr. Frederick H. Prince. In earlier years, between 1911 and 1922, a Mr. Armour of Chicago owned, roughly, 20 per cent of the shares of the stock in the Maine Company. That company is the top company of what for lack of a better name we have called the Chicago Stock Yards Enterprise. It dominates the other companies; it fixes their policies; it tells them what to do; and that is the taxpayer in the case.

Directly below the Chicago Stock Yards Company, in the center of the chart, in a large box, appears the Chicago Junction Railways, and Union Stock Yards Company. That is a New Jersey corporation. It was formed in 1890. It has a capital structure of preferred stock of the par value of $6,500,000, of which a small number, 2362 shares, are owned by the Maine company. It has a precisely identical issue of common, 65,000 shares, a capital structure of $6,500,000 at par value, of which as of the end of the period in question, 60,336 shares were owned by the Maine company. It has bonds outstanding of $14,000,000 which are due in 1940. It has guaranteed bonds of two subsidiary companies which I shall mention presently, one in the sum of $2,327,000 and one in the sum of $2,250,000. The stock, both common and preferred, has precisely equal voting powers. The pre-

ferred always has had full voting rights equal to the common.

This company about which I have been talking, as I think I said, was formed in 1890, and from 1894 it was the connecting—not 1894, but 1911, when the Maine company was formed. This company which we will constantly call the Jersey company, for that is the State of its incorporation, was the connecting link between the taxpayer at the top and the operating companies which appear at the third level of the chart.

I now take up those operating companies as they appear here. On the left of the chart, in the third level, is the Union Stock Yards & Transit Company of Chicago. That will constantly be referred to as the Transit Company. That company is the oldest company in the group. It was formed in 1865 by special act of the Illinois Legislature. At all times material to this case they had a capital stock structure of $13,200,000 par value, meaning, of course, 132,000 shares, and they were wholly owned by the New Jersey Company, the connecting link, as I have said, between the taxpayer and the operating companies.

Next at the third level is the Chicago Junction Railway Company. Mr. Green reminds me that I should say to Your Honor that the Transit Company, so-called, is the company that operates the Great Chicago Stock Yards, where stock comes in and is unloaded and fed and sold and delivered to purchasers, chiefly the packers, whose plants are nearby.

The Chicago Junction Railway Company appears next on this third level. That also is an Illinois corporation. It has a capital structure of 55,000 shares of stock and those again are wholly owned by the New Jersey Company, the connecting link with the Maine Company. That company is, for practical purposes, the owner of the Railway Company which serves the Chicago stockyards. The railway is, how-

ever, leased to the New York Central system and is actually operated by the New York Central.

Next on the third level is a company—

The Member: The New York Central is the lessee of properties from this Illinois Corporation, is it?

Mr. Welch: That is—

The Member: And the shares of the Illinois corporation are, in turn, to a large extent owned by the New Jersey corporation above it; is that correct?

Mr. Welch: Wholly owned.

The Member: Wholly owned?

Mr. Welch: Wholly owned. The next company on this same level is the Chicago Junction Railroad Company. Perhaps I should have said that we will constantly refer to the Chicago Junction Railway Company as the Railway Company and we shall refer throughout the case to the Chicago Junction Railroad Company as the Railroad Company.

Now, I confess that that is a slight distinction, and I had my difficulties with it myself, but if Your Honor will remember that the Railway Company is the steam railway, the big network of rails that feeds the stock yards, and that the Railroad Company is only a little passenger elevated line with a loop around the stock yards, and which, incidentally, doesn't loom very large in this case, I think the confusion that once existed in my mind about it will never exist in Your Honor's mind.

This Railroad Company is again an Illinois corporation. It was organized in 1903. It has a capital structure of 500 shares. It is wholly owned again by the New Jersey Company, this connecting link of which I have spoken, and it has a bond issue outstanding of $2,327,000, which is guaranteed, both the principal and interest, by the New Jersey Company. The furthest—

The Member: Now, just before you get off that, does it operate its own railroad?

Mr. Welch: I am glad to be reminded. It does not. The Railroad as soon as it was built was leased to the Chicago South Side Elevated Railway Company—Railroad Company of Chicago, and was operated by them until it went into receivership and, indeed, is now operated by the receiver.

The Member: Is that connected with the Chicago Elevated Railways, that is, the Loop Railroad? Or is it operated entirely separate?

Mr. Welch: I am under the impression that the South Side Elevated in Chicago is a separate company from the one that operates the Loop. Your Honor is perhaps more—

The Member: It doesn't come up into the main part of Chicago, then, at all?

Mr. Welch: I think it connects with it. It is not unlikely that Your Honor knows more about it than I do.

The Member: I think I know nothing about it from the standpoint of incorporate operation, and I wanted to find out whether it is wholly disassociated from the general elevated railways of Chicago or whether it is a part of that general Chicago elevated railway set-up.

Mr. Welch: Certainly it is a part of the general Chicago elevated railway set-up, but whether or not there is a separate company here and there is something that I think is not material to the case, and I don't actually know.

The Member: Very well.

Mr. Welch: As you move furthest to the right on this third level, you come to the Central Manufacturing District. That will be constantly referred to—

The Member: At all events, the Chicago Junction Railroad Company is not itself an operating company?

Mr. Welch: It is not.

The Member: But from the standpoint of its operations, it is only a lessor?

Mr. Welch: That is correct.

The Member: From the standpoint of intercorporate relations, its shares are entirely owned by the New Jersey Company?

Mr. Welch: Correct.

The Member: That is correct, isn't it?

Mr. Welch: That is right.

The Member: So it stands between those two more or less as a figure?

Mr. Welch: That is entirely correct.

The Member: Yes.

Mr. Welch: I now pass on to the last company on the right of this third level, which is the Central Manufacturing District, and which we will constantly refer to throughout the case as C. M. D., using just the initials. That concern is not a corporation. It is a trust in the Massachusetts form of real estate trust. All its shares are owned by the Jersey Company, and for purposes of this case it is entirely equal to a corporation. The Central Manufacturing District owns real estate to the north and to the northwest of the stock yards itself, and soon we shall have a map in the courtroom which will make all of that quite clear to Your Honor. Its capital set-up is to the extent of $4,098,000, and, as I said, it is represented by certificates of ownership wholly owned by the New Jersey Company. It has bonds outstanding of $2,250,000. This concern owns vacant land, develops it, and sells the land generally with a building built by the C. M. D. on the land to customers, also generally over long terms. Its only purpose was to develop tonnages for the Railway Company and thus make the Railway Company more valuable as a mover of freight. I should have said, Your Honor, that the bonds of the Cen-

tral Manufacturing District to the extent of $2,250,000 again are guaranteed by the Jersey Company.

Now, just below the Central Manufacturing District on the chart is something of trivial importance, but it goes there to make up the family tree. That is the Central Storage & Forwarding Company.

The Member: Now, as to the Central Manufacturing District, do I understand that its sole function is to acquire and dispose of real estate for the purpose of improving or acting as an industrial feeder to the railroad?

Mr. Welch: I should say disposes of. Its acquisitions have been fixed for a long period of time.

The Member: It is not engaged in acquiring any more?

Mr. Welch: No, for practical purposes it is not. It has this big tract, and for years it has been developing it and disposing of it either by lease or by sale on long-term contracts; and, as I said, always with an eye to a purchaser who would have freight moving in and out and thus developing tonnages for the Railway Company.

The Member: And that is all it does?

Mr. Welch: That is all it does.

I was speaking of this little subsidiary below the Central Manufacturing District, the Central Storage & Forwarding Company, a small company with a capital stock of $250,000. It is wholly owned by C. M. D., and its business is as its name would indicate, and I think it is of relatively trifling importance in this case.

We move clear to the left of the chart, at the lowest level, and we find a little company called "The Stock Yards Harness & Saddlery Company." That is a little company that sells harness and saddles to customers about the yards. It is a small company with a capital stock of $10,000, 100 shares, and it is wholly owned by the Transit Company. It

is a little business, but we have to put it in to fill out the whole family tree.

Now, I move back to the second level of the chart again, where, on the left of the chart, is the Produce Terminal Corporation. That is an Illinois Corporation, and we will refer to it constantly as Produce Terminal. It has a capital structure of $2,000,000, par value of 20,000 shares, and they are wholly owned by the Maine Company. This Produce Terminal Corporation manufactures heat, light, power, and water. If "manufactures" is not the word, it, at least, delivers those services to the stock yards and to some extent to packing town, which are the packers adjoining it, and to these industries that have grown up in C. M. D. It began as an operation of the Transit Company, which runs the stock yards, and became a tidy little utility, so that in the end, the Commerce Commission in Illinois insisted that it should be separately incorporated so that it might be regulated, and that was done in 1915.

As I have said, it is wholly owned by the Maine Company.

On this same level, over on the right, is a curious little corporation of small interest, I think, to any of us, called the Pan Corporation. It was incorporated in 1931, and has a capital structure of only $5,000; and its 50 shares are owned entirely by the Maine Company. That Company owns easements for the power lines of the Produce Terminal which runs around this area. It may seem like an odd little company, but the reason for its incorporation was that as the C. M. D. would make conveyances of property, quite a hodgepodge grew up as to easements. Sometimes they would get conveyed and sometimes they wouldn't, so it was thought desirable to get all those easements into this little corporation where they could be dealt with in a unified way. As I have said, it is a somewhat curious little company, and I doubt if Mr. Clark has much more interest in it than I do.

Furthest of all to the right is something that is of more importance. These two companies are dependent one on the other, and I will speak of the bottom one first, that is, the Livestock National Bank of Chicago. It was incorporated in 1933, and it has a capital stock of a million dollars.

The Member: 1933?

Mr. Welch: 1933. That is right, Your Honor.

The Member: The last year of those that are in issue?

Mr. Welch: That is right. It is a consequence of the bank crisis in Chicago, and that is why its incorporation is so late. It has 50,000 shares of stock outstanding, of which 40,000 are owned by Western Associates, Inc., which appears just above in the chart, and Western Associates, Inc., in turn, a Delaware corporation, is owned entirely by the Maine Company. The only purpose of the Western Associates, Inc., is that it should be a vehicle to hold the stock of the Livestock National Bank of Chicago.

Now, this Livestock National Bank of Chicago is something that emerged after a collapse of two banks of the Chicago Stock Yards. It will appear in evidence that the Maine Company together with its subsidiaries came to the rescue of those banks because of their intimate connection with the stock yards industry, in 1930 and 1932, and as a result of that rescue, the Livestock National Bank was formed, and the little Delaware company to hold its stock was formed, but the thing traces through to ownership by the Maine Company.

The Member: Didn't you say that the Delaware Company owns 40,000 of the 50,000?

Mr. Welch: Of the 50,000. There are 10,000 owned by the public, former stockholders of the defunct banks, who were given an opportunity to come into the new bank, and a few of them did to the extent that I have indicated.

The Member: But their identity is of no consequence?

Mr. Welch: None whatever. Now this which I have called the family tree of the enterprise—

The Member: You don't mind my interrupting you?

Mr. Welch: Not at all. I enjoy it, Your Honor.

The Member: This Livestock Bank, has it any functions in this organization? You say it was organized for the purpose of rescuing some existing firms from financial difficulty. That may explain its organization, but what is its present or what, during the taxable years, was its functional relation to this enterprise?

Mr. Welch: Well, its functional relation was this, if Your Honor please. The old bank that collapsed had been there since the Civil War days. It had come to be looked on by the public as an integral part of the stock yards.

The Member: What bank was it?

Mr. Welch: The Stock Yards National Bank was its name prior to this difficulty. It is of importance in this case for this reason: It was felt by the management of the Maine Company that if a bank at the stock yards failed and the word went out through the country that the stock yards bank had failed, it would give a fearful black eye to this whole enterprise, and so perfectly startling sums of money were put into the Livestock National Bank to save it and reorganize it in 1933.

The Member: Well, at that time was that bank independently owned?

Mr. Welch: It was.

The Member: And operated?

Mr. Welch: It was.

The Member: Yes.

Mr. Welch: And the sole reason for the enterprise coming to its rescue was that it was identified in the public mind with the stock yards, and now the enterprise can look with some pride and comfort at a perfectly sound bank that is

there at this moment, as the evidence will show. It is a bank which is constantly used by the shippers of livestock to the market, by the banks that the former deals with in the western States, and is used also by the commission men who buy stock at the stock yards, and is now an integral part of the whole enterprise, and one in which the management takes a certain amount of pride, although I will say to Your Honor that there was a good deal of pain prior to the pride when the money had to go in.

The Member: Its function is not restricted, however, to the enterprise, I take it? It provides the same banking facilities that had been provided to the entire territory, the entire business community that had been provided by the earlier banking corporations? I am trying to ascertain or get in my mind whether there is any peculiar business or functional relationship between the bank and these enterprises other than a mere ownership of stock.

Mr. Welch: Well, I think the answer is a little of both. Of course it is a perfectly public bank. It would be glad to take Your Honor's deposit or mine, and will deal as any bank will deal. On the other hand, it is now a depository of funds of the operating companies and the real secret of it is that the enterprise no longer has this risk as having the bank that is identified in the public mind with the yards run by somebody else and ready to collapse, as it did collapse in 1932.

The Member: So that its reason for existence is really a matter of history rather than a matter of present-day necessity or demand?

Mr. Welch: I should think that was true.

Now I have mentioned all the companies that go to make up this enterprise.

On the third level are the companies which run the great stock yards, which own and lease the great network of rails

that run in to bring livestock in, to take the finished product of the packers out and to bring raw materials to the Central Manufacturing District and take its products out.

The elevated railway structure I mentioned, and Central Manufacturing District, this real estate development where buildings are built and sold on long-term contract—

The Member: Did you say "Railway Company"?

Mr. Welch: Railroad, we call it.

The Member: I think you said "Railway." I think it is important that we should get a term that is not going to be subject to any confusion. I think you had better call it the past railway to distinguish it from this confusion of Railway and Railroad.

Mr. Welch: Maybe the word "Elevated" would be good. It is a single word, and I will strike it and call it Elevated, if we may.

The Member: How is that with you?

Mr. Pierson: That is satisfactory, Your Honor.

The Member: We will call it, the third company, the Elevated.

And could the other company, the Central Manufacturing District, be called something besides C. M. D.? Could that be called the Manufacturing District, or something like that?

Mr. Welch: I don't know whether to make that premise or not. For months we have called it C. M. D.

The Member: We have this difficulty in all these complicated cases; in finding symbols and the poorest symbols you can get are symbols of initials. Nobody likes them. They are confusing and bothersome, and I, myself, have a very distinct prejudice against them. They annoy me very much, and I would like to start out by using something else, if you could devise a term other than "C. M. D."

Mr. Welch: Mr. Green is inventive and he said call it The District.

Mr. Pierson: I think that is all right. However, I might state this: In the stipulation we have referred to it by initials all the way through as C. M. D.; so long as it doesn't become confusing, otherwise.

The Member: That is all right in the stipulation, but when you are talking to me I would rather you use "Commissions." It serves to obstruct my thinking because I get annoyed by it. No use of giving me a psychological jump.

Mr. Welch: As I said, Your Honor, those four companies on that level are owned by the Jersey Company, the intermediate link, but are in turn dominated, directed, and bossed by the top company, the Maine Company. The Maine Company is the bank for all the corporation.

It tells them what to do, when to do it; it chooses the key man, decides their dividend policies, runs their finances and everything of that sort so that the enterprise, although somewhat complicated as we begin to talk about it, really heads up in the Maine Company, the taxpayer at the top of the chart.

It follows that I have mentioned to Your Honor every company that is involved in the case with a single exception, and that is fair because it is not actually a part of the family tree, but you will hear in the case a good deal about a concern called F. H. Prince & Company. F. H. Prince & Company was a banking house in Boston with seats on the New York and Boston Stock Exchange, and Chicago, as well. At all material times it was wholly owned by Mr. F. H. Prince; for many years the only stockholder in the Maine Company; but you will hear a great deal in the case about F. H. Prince for the reason that in the early years after the formation of the Maine Company, when its financial picture was not as rosy as it is now, F. H. Prince was gen-

erally known—should I say—as sort of a godfather,—lent large sums of money to it and has engaged, all through the years, in a series of very important transactions involving the Maine Company such as acquiring stock in the Jersey Company, about which I will be talking to Your Honor in a moment; financing its purchases; buying and securing proxies in other companies so that throughout the case I think Your Honor will hear quite steadily of F. H. Prince, and I thought it is wise to mention it, although they are not on the family tree, so that the company will not be a stranger to you when it begins to be talked about in the case.

Now having dealt with what I call the family tree I should like to proceed to what is more correctly an opening in the case, and I thought, Mr. Clark, I would just sort of tell a narrative story of the thing rather than to say the evidence will show this and that, so that we try to get a picture of what is the history and story of this thing.

Of course it was not always as complicated as it would seem to be on the chart. Once there was just one company; the Union Stock Yards and Transit Company of Chicago, which we call the Transit Company.

That was formed in 1865. At that time there was no central market for live stock in Chicago. Railroads that had terminals in Chicago brought in livestock at scattered places where it was sold and transferred to the slaughter houses.

In that year some railroad men got the idea that a central place to receive stock and have it marketed was greatly needed and the Transit Company was formed at that time.

It operated, when it got going, at yards which are there to this day. It built and operated a railroad called a belt line to bring stock in and take packers' produce out and in time it began to manufacture power, light, and furnish water, which services, as I have said to Your Honor, later

will split off and was done by something called the Produce Terminal Company. It was incorporated under a special act of the Illinois Legislature.

It is interesting to see the old document. It is written in longhand, and it had one interesting and important feature, and that was that by its charter, under this special act, it was limited in borrowing power to the sum of $500,000, and that limit has never been changed and I think it is quite clear that it never will be changed.

Now from the time of its formation until 1890 there was a period of growth, steady and no doubt pleasant, and as it grew, packers, the great packers, Swift, Armour & Company, Wilson, Libby, all those big packers moved in to land just adjoining the stock yards on the west so that stock could be unloaded and driven on the hoof over viaducts and through runways direct from the stockyards to these packers.

Now that concern was a success and obviously it made money. By 1890 the packers began to look on it with somewhat greedy eyes and began to say they were responsible for its success, and they began to threaten that they would move away from this district unless something was done for them and I may say to Your Honor they were indeed very crass about it. They said they wanted to be paid bonuses to stay there, and they were clever; they went over in Indiana to a place called Packing Town, and they bought a tract of land over there and they said in a loud tone of voice, "We are going to move over there unless we get something out of the stock yards."

Well, Mr. Prince had by that time become an owner of some of the stock of the Transit Company.

The Member: When was that, approximately?

Mr. Welch: 1890, is what I am really talking about.

In 1882 Mr. Prince had gone to Chicago and seen the

stock yards, and had bought a few shares of the Transit Company.

Now the Transit Company was appalled by these demands. It was a serious threat and if had this difficulty in its capital structure in that it could not borrow money and it didn't have anything like the sums of money available that the packers were talking about, so a man in Boston named Thayer conceived the idea of forming another company which would have large borrowing capacity and which could have a much broader capital structure than was open to the Transit Company, which company might acquire the stock of the Transit Company and would deal with the packers and that results in the Jersey Company, in the middle of the chart (indicating).

This man Thayer that I have mentioned interested Mr. Frederick H. Prince in this idea of forming a new company, and Mr. Prince went to work on it.

He went abroad to get some of his financing and he went to New Jersey as the State of his incorporation, because it was in 1890, I think, it was true that only a New Jersey corporation could own stock in a foreign corporation. At least it was believed that that was true, so New Jersey was chosen as the State of incorporation of the new company.

There was, however, a price to pay for going to New Jersey, the price being that in 1890 that although a New Jersey Company could own stock in a foreign corporation it could not have a life of more than 50 years. That is to say, that particular kind of a company, a company formed to hold the stock of another company and to deal in it and aid it, was restricted under New Jersey law as it then stood to a life of 50 years.

So the Jersey Company was formed in 1890 with a life of 50 years, which means 1940, naturally, and it had the capital structure of which I have spoken of 6½ million of com-

mon and 6½ million of preferred, and it had the capacity to borrow.

It borrowed ten millions of dollars at that time, and was enabled—thus was enabled to acquire all of the stock of the Transit Company, and it did so; it did so acquire it and owns it today and after it had acquired all that stock the Jersey Company went around to the packers and handed to them large quantities of bonds which the packers gleefully took and in return for which they agreed that they would stay at the stock yards for a period of 15 years; that means 1907, because although the Jersey Company was formed in 1890 the packed contract was not actually signed up and the bonds delivered to them until 1892.

Now the consequence of that, if Your Honor please, was that beginning in 1892 the Jersey Company entered into a period of tranquility. The packers were satisfied; their bluff, if it was a bluff, or the noise, at least, about their moving away was over and this 15-year period of tranquility and growth began.

Now in that period things began to happen about the railway—that is, the steam road, the belt line servicing the stockyards, and I would like to trace through that now to their conclusion.

In 1897 the Transit Company made a lease of its railway of what is called the Inner Belt to a wholly-owned subsidiary of the New Jersey Company which was called the Chicago & Indiana State Line Railway Company.

In 1898 the Jersey Company acquired the stock of a company that was constructing a so-called Outer Belt which was a connecting railway intersecting the lines entering Chicago on a radius further removed from the stock yards than what is called the Inner Belt. That ran from Indiana Harbor to Franklin Park, which Mr. Green says may mean something to Your Honor as a matter of geography.

The Member: Is that Indiana Harbor Belt Railway?

Mr. Welch: That is correct, Your Honor.

Then the New Jersey Company formed this Chicago Junction Railway Company, which was a consolidation of the two companies so that when it was formed the New Jersey owned all the stock of the Railway Company, owned both the Inner and Outer Belts, or at least operating both the Inner and Outer Belts.

In 1907 the Outer Belt was sold. It did not serve the stock yards so intimately, of course, as the Inner Belt, and when the packers clustered so closely around the stock yards, as they did, the Outer Belt was no longer so integral a part of the enterprise as it had been.

In earlier years there had been scattered packing houses further out that had been served to some extent by this Outer Belt but when the thing became centralized the Outer Belt didn't seem to be so important and it was sold.

The Member: Isn't it true—I am bringing in my own memory here—whether it is not true whether the two Indiana Harbor Belt Packing stockyards were only—that the Indiana Harbor Belt was serving industrial Chicago quite other than stock yards?

Mr. Welch: Indeed, and that, I think, was the reason it was sold because it was not so integral a part. There had been a few packers at Hammond, Ind., which had been served in the earlier years.

In 1913 the lease between the Transit Company and the Railway Company was revived, the principal change being that under that lease the lease was in perpetuity whereas the earlier lease had been for a term of years and the rental in the 1913 lease was fixed at approximately $600,000.

The Transit Company never actually operated the Railway Company after 1897, and indeed when 1922 comes

around, as I told Your Honor earlier, the New York Central, through a subsidiary, becomes a lessee of the Inner Belt and pays the rather gorgeous rental of $2,000,000 a year for that privilege, so that after 1922 you have a purely lessor situation as far as the stock yards' enterprise is concerned, and the operations by the New York Central.

I ought also to add that between 1897 and 1922 the Railway Company actually operated and then ceased in 1922 and I think Your Honor would have drawn that inference.

Now I would like to go back for a moment to the Jersey Company and its bonds and the supporting mortgage.

The Jersey Company began, in 1890, with a $10,000,000 bond issue. That was a five percent issue, and it was due in 1915.

In 1892 it issued $3,000,000 of debentures which were those bonds I mentioned that went to the packers and it also issued $400,000 of 5 percent notes in 1898 by that Outer Belt, of which I have spoken.

By 1900 the Jersey Company had outstanding in bonds and notes $13,000,000 and it decided at that time to refund those notes and its $10,000,000 bond issue, and so in 1900 a new bond issue was put out by the New Jersey Company in the sum of $14,000,000, four millions of it was used to retire the notes and the packers' debentures, and the $10,000,000 was reserved to retire the original $10,000,000 issue when it became due in 1915.

Now this mortgage was secured by all the stock of the Transit Company, and also by all the stock of the Railway Company.

Now when 1915 came around you couldn't refund the $10,000,000 at 4 percent, and it was necessary to amend the indenture and increase the interest 1 percent to 5 percent, so that as of today the Jersey Company has $14,000,000

of bonds outstanding due in 1940 of which issue $4,000,000 carry 4 percent and $10,000,000 carry 5 percent.

Now I want to go back for a moment to the sale of the Outer Belt in 1907. Part of the consideration of that sale, or for it, was $2,500,000 in bonds of the Indiana Harbor Belt Railway Company.

Your Honor will remember that at that time all the stock of the Railway Company was pledged to support this Jersey mortgage and the trustee of the mortgage took the position that the stock could not be voted in favor of the sale of the Outer Belt unless that $2,500,000 worth of bonds were brought under the New Jersey mortgage as further security for it, and the consequence was that that happened.

I think I have already said to Your Honor that the preferred and common shares of the Jersey Company always have had equal voting power

I now want to turn to what I shall strive hereafter to call the Elevated Company.

In 1903 an ordinance went through in Chicago requiring all railroad tracks to be elevated and that hit, of course, the railway whose tracks then had to be elevated.

Prior to that time people who worked in the stockyards or a packing town had poor facilities for reaching work, and the occasion of the elevation of the freight tracks created a favorable opportunity to construct an elevated line which should connect with the South Side Elevated, as I have told Your Honor earlier, and with a loop running around the stock yards and packing town so that workmen and passengers could get brought in by a modern method; so in 1903 this Elevated Company was formed. It took in excess of $2,327,000 to construct it, as will be developed in the testimony, but it was thought it could be constructed for that figure. Those were the first estimates.

So when the Elevated Company, the Chicago Junction

Railroad Company, was formed, the idea was that it should issue bonds in the amount of $2,327,000 to get funds to build the loop.

That company, however, had no credit and it was necessary that the Jersey Company guarantee its bonds both as to principal and interest so that the bond issue could really be placed and the funds raised, and that was done.

It will appear that additional funds were necessary to complete its construction, which were furnished by the Transit Company and the New Jersey Company, and when it was completed it was leased at a rental which precisely equaled the interest on its bonds plus taxes, and which offered no hope that the lease would ever turn into a sum of money that would retire that bond issue. Worse than that, in the end, the South Side Elevated went into receivership and for some years, now, the Jersey Company has been paying the interest on the bond issue of this Elevated concern, and the taxes, as well.

The testimony will be that at the end it is clear it will have to pay the bonds, themselves, under its guarantee.

The Member: Just a minute. I wish you would read the last sentence or two. I think there is some confusion.

(Record read as follows:

"Worse than that, in the end, the South Side Elevated went into receivership and for some years, now, the Jersey Company has been paying the interest on the bond issue of this Elevated concern, and the taxes, as well.

"The testimony will be that at the end it is clear, it will have to pay the bonds, themselves, under its guarantee.")

The Member: All right. I misunderstood you.

Mr. Welch: Now I turn to the District; that is this real

estate and tonnage development to the north and west of the stockyards.

At the time of its acquisition by the Jersey Company this was quite a large tract of vacant land. It was of interest to the Transit Company for two reasons; in the first place, it was something of a threat to the stock yards as a possible location to which the packers could move or threaten to move, as they had done in 1890, but very much more important than that it lay adjacent to this net work of rails and thus offered an opportunity to develop a manufacturing district that would supply both incoming and outgoing tonnages for the railroad and so that area of land was acquired, and, as I have explained, by a trust, all the shares of which were owned by the Jersey Company, and through the years that district has been developed with success until it is a small city, and the testimony will show, of successful industries and a large builder of tonnages for the railroad. It has issued bonds from time to time and the amounts vary throughout the years, in this case, because some were serial bonds, but at the end of 1933 the amount outstanding was $2,250,000, and those bonds also bear the guarantee of the Jersey Company.

Now, Produce Terminal, I need say little about, now, because I have already indicated to Your Honor that it grew up somewhat like Topsy did: They began to make power and light for themselves, "They" meaning the Transit Company. Other people began to buy it and it reached the status and the size so that the Commerce Commission of Illinois said it had to be separately incorporated, and it was so incorporated.

Originally all its stock was owned by the Transit Company. Through the years the stock was passed first to the Jersey Company by the Transit Company as a dividend; later passed by the Jersey Company to the Maine Com-

pany as a dividend where it now is wholly owned by the Maine Company.

Now my history has led me to the point where you meet with the formation of the Maine Company and there I think it becomes somewhat less dull than it has been, let us say, for the last 10 or 15 minutes.

Your Honor will remember that that contract with the packers by which they agreed to stay at the yards expired in 1907 and when 1907 came around the packers came right around with some more demands and some more threats.

This time their demands were rougher than they were in 1890. This time they said they guessed they would like to own the Jersey Company; that it would be all right with them if the old stockholders of the Jersey Company continued to get some return on their stock but that except for that they guessed they would like to own it, and a period of negotiations that actually lasted for years, began.

The directors of the Jersey Company, of which Frederick H. Prince was one, were frightened by the packers. They were divided in their councils. They didn't know what to do.

The Member? Is that ownership fairly well diversified or is it in one—

Mr. Welch: Yes, pretty well diversified although Mr. Prince, by this time, had become quite a substantial stockholder in the Jersey Company. I think the evidence will be that he owned two or three thousand shares.

The Member: Out of how many?

Mr. Welch: Oh, out of 65,000 common, and there were just hundreds and hundreds of shareholders. There was no strong, dominant figure in that.

Well, these frightened directors thought of everything they could and among other things the idea of another bonus was discussed by them, and we are further along

in history than we were in 1890, and some directors doubted the validity of the payment of bonuses and in the end they paid a small bonus to a packer, a little packer and pointedly directed the attention of the Department of Justice to the payment so that a test case could be brought, and the test case was brought and in the end it was decided in that case that the bonus was illegal but that decision was of very little importance because Mr. Frederick H. Prince had invented a bold idea. He made up his mind that if in some way Armour & Company could be split off from the group of packers and in some way satisfied and kept at the yards, everyone else would follow suit, and so Mr. Prince got the idea of really doing the 1890 thing over again, when the Jersey Company was formed, and forming a new company to deal with the packers, but he meant to deal with one, only, believing that the rest would stay if the great Armour plant stayed, and so he formed this Maine Company and Armour, Mr. J. Ogden Armour, became a shareholder in the Maine Company to the extent of, roughly, 20 percent.

Now when the Maine Company was formed it did this: It offered to the Jersey shareholders alternative options. It said to a Jersey shareholder, "If you wish, you may have bonds of the Maine Company and we will give you $200 in bonds for $100 in stock of the Jersey Company, and those bonds will pay 5 percent, so that you will get on your single share of Jersey stock 10 percent.

"If you don't want to do that —";

The Member: You are talking about an exchange!

Mr. Welch: That is right; an exchange of Jersey stock for bonds.

"If you don't want to do that, you may turn in your Jersey certificate and have it stamped with a contract between the Maine Company and you, as a stockholder, under

which contract the Maine Company will guarantee to you nine percent as a dividend."

That, by the way, was one percent better than the maximum that the packers in the five-year wrangle had ever said they would allow the Jersey shareholders to have.

Now, $1,000,000 went into the Maine Company that time, so that the shareholders of the Jersey Company could look to a company that had a million dollars in cash in it to guarantee that they would receive interest on their bonds, if they took bonds, or receive this guaranteed dividend, if they turned in their stock and had it stamped.

And what happened was that the directors of the Jersey Company and its stockholders—shall I say—gave three cheers, the long period, this agonized period of wondering whether their company was going to be destroyed by the packers, was over.

Here was the company in the hands of a strong man who was guaranteeing them either bond interest or fixed return on their shares, and they flocked in and exchanged shares for bonds, or had their stock stamped. I think it is implicit in what I have said to Your Honor that the contract with the Jersey shareholders naturally provided, if they were guaranteed 9 percent on their stock, all earnings in excess of 9 percent were to go to the Maine Company, but I should perhaps have stated that.

By the end of 1911, 18,705 shares of the Jersey stock had been turned in and exchanged for bonds. By the end of the year 1912 31,843 shares had been stamped with the guarantee, and 30,871 shares had been exchanged for bonds, leaving only a couple thousand outstanding.

By 1914, in August, out of 65,000 shares of Jersey common and it is common of which I am speaking, 33,922 shares had been stamped with the guarantee, and 31,075 shares turned in for bonds, and at that time the owner of 3 shares

of the Jersey Company could not be found, but in the end he was found and every share of stock in the Jersey Company finally, either is exchanged for bonds or accepts this stamp and this guarantee.

I think it is of some interest to observe that on two occasions, first when the Jersey Company acquires the Transit Company stock—at the end every share is acquired and again it is interesting to think that when the Maine Company was formed every share of stock comes in either to be exchanged for bonds or to accept the stamp and the guarantee.

Now I think at this point it is important to see what the position of the Maine Company is. It owns, let us say, in 1912, no preferred stock of the Jersey Company. It owns, roughly, half of the common stock which has been exchanged for bonds. The other half of the common is outstanding, bearing the contractual stamp of which I have spoken.

The guarantee on that stock was unlimited as to time, although the Jersey Company's charter expired in 1940, and, remembering, as I pointed out to Your Honor, that the preferred had full voting rights, the Maine Company has roughly 25 percent of the voting rights of the Jersey Company, and that is all it has although it does have, in addition to this contractual right, to receive earnings in excess of 9 percent, and I will say to Your Honor that that contractual right proved to be of value because through the years the Jersey Company has earned more than that, so that the Maine Company has actually made a profit on the contract.

Now, if Your Honor please, when all this had happened, I suppose it is fair to say that Mr. Prince must have taken a sort of a deep breath and said, "Well, I have got somewhere. The packers didn't move"—because I should say

to Your Honor that his idea that if Mr. Armour subsided, didn't threaten any more to move, that everybody else would stop his threats, and that happened, and once more this enterprise moves into a period of relative tranquility.

But Mr. Prince looked around and sized up his situation. He was, of course, the large owner of the Maine Company; owned 80 percent of it, and Mr. Armour owned only 20 percent, and there were, it will appear from the evidence, two possible alternatives before Mr. Prince; one was to treat the Maine Company as what you might call pure adventure, hoping it would make some money above the guarantee to the Jersey stockholders; take in its money declared out in dividends and bow out of the picture when the Jersey charter expired in 1940. That was one alternative.

The other alternative was to get busy in the 25 years or so that faced it and get in such a position when the Jersey Company charter expired in 1940, the Maine Company would at long last own the enterprise.

The contract that he had with the shareholders of the Jersey Company relating to the guarantee of 9 percent had no provision whatever in it as to anybody's rights on liquidation of the Jersey Company. It dealt purely with earnings.

It will appear in evidence that Mr. Prince made his choice promptly, and his choice was the choice Your Honor would have made. He made the choice that he would, if possible, get the Maine Company in position so that when the Jersey Company's charter expired in 1940 the Maine Company would, as I say, succeed to the ownership of this concern. That's in 1911 or 1912. There was no income tax to be thought of. It was not yet on the books.

And so he made that choice that I think Your Honor would have made.

The Member: You don't exclude the corporation excise tax, do you?

Mr. Welch: I am speaking only of income tax.

The Member: Well, as to the corporation?

Mr. Welch: There was a small excise.

The Member: I know, but it was based on income. You can't say there wasn't any income tax in 1910 or 1911 when you had a corporation excise tax based on income.

Mr. Welch: I should have said individual income tax.

The Member: You are talking about only Mr. Prince.

Mr. Welch: Yes, Mr. Prince himself.

That is to say, I think it is quite clear that nobody will claim this company was formed for the purpose the Government complains of, because it was formed in 1911.

Now what could Mr. Prince do, and what should he do, as he made this decision?

He couldn't do anything about the Jersey bonds. There isn't much point in doing anything about the Jersey preferred, because that is not callable, it can be retired at par in 1940, but not before then. There was, however, one thing he could do, and that was to go out into the market and acquire Jersey common in the hands of the public with the stamp on it, as rapidly as he could, so that he would grow from 25 percent voting power to all the voting power of the common, if he could achieve that program.

Now, it is at that time, if Your Honor please, that this F. H. Prince Company, this banking house of which I have spoken, comes forward.

The Maine Company has only a million dollars, and its earnings don't turn out to be very happy in the early years. It has never got much money in its treasury, but F. H. Prince & Company, under Mr. Prince's direction, marches out and puts out its own money and buys Jersey common for the account of the Maine Company.

It starts before Christmas is celebrated in the year of the incorporation of the Maine Company, and by 1918 F. H. Prince & Company has acquired, roughly, 18,000 shares of Jersey common, and has spent over three millions of dollars in doing so. That is three times the complete capital of the Maine Company.

Not only that, the program of acquiring that common has gone on steadily through the years, and F. H. Prince & Company has watched for every death of every stockholder of the Jersey Company, or every share coming on the market, and at every opportunity has steadily acquired it until today over 99 percent of that common stock of the Jersey Company has been acquired through F. H. Prince & Company, by the Maine Company.

Now, all well and good for Mr. Prince's program. He has done what he can about the stock; he doesn't need to worry about the preferred, because it will be paid off at par in 1940; he doesn't need to worry about acquiring it, but he had some liens on this enterprise ahead of that common stock. And what are those liens? Well, a big one is that Jersey bond issue of $14,000,000, due in 1940. Some more things to think about are bonds that have been guaranteed by the Jersey Company, about $5,000,000. And another thing to think about is that six and a half million dollars is going to be required to pay off the Jersey preferred in 1940.

And so the evidence in this case, if Your Honor please, will be that Mr. Prince, when the time came that he could do it, began to accumulate funds in the Maine Company to discharge those liens that were ahead of that common stock ownership, and really to own this enterprise, and, if possible, own it free of debt, in 1940.

I want to say at this point, however, that he did not accumulate everything. He has had a steady dividend policy,

It became steady after that lease of the Railroad to the New York Central. That stabilized and made quite secure the income of the enterprise, and, as a consequence of the Maine Company,—and beginning in 1924 there had been dividends prior to that, although somewhat irregular, and some years skipped,—Mr. Prince established a rate of 5 percent on the 80,000 shares of the stock of the Maine Company. That was $400,000 a year. His testimony will be that he said to himself that he thought he was entitled to a very substantial income for having put the enterprise in its present condition; that 5 percent seemed like a fair income to him, and that it was his opinion that the Maine Company could stand that large a dividend and still carry out its program that it had facing it by 1940.

Now, one other thing at this point that I think is of some interest, and that is this, if Your Honor please; Mr. Prince visualized the Maine Company; in the early years he visualized it as what it is today, as the top company, the boss company, the managing company, and the banker for the group, and very early the policy of sweeping all of the earnings through from the bottom to the top was begun, and throughout the case when Your Honor comes to study it you will find this extraordinary fact, that the operating companies, except for bare requirements of working capital, have through the years steadily been stripped, and the money accumulated in the Maine Company where, so the testimony will be, it can be used for this 1940 crisis.

Now, if Your Honor please, the program that Mr. Prince formed and has been carrying forward, has not been all clear sailing. There have been interruptions and troubles, and serious ones. Curiously enough, the old packers' troubles bobbed up once more. In the end, meaning by the end of that phase of it, in 1920 and '21, a suit was brought against Mr. Armour by the United States in which it was

sought to have him ordered to dispose of his holdings in the Maine Company, the belief being that it was bad that a packer should own an interest in the stock yards. In the end, a decree was entered and Mr. Armour was ordered to dispose of his stock. Now, I say—

The Member: What was that, a Sherman law case?

Mr. Welch: It was.

Now, the old packer trouble is up once more for what I hope, or what Mr. Keeney, general counsel for the company, would have hoped was its final phase. It didn't turn out to be. Mr. Armour has been ordered to sell his stock. There isn't anyone in the old country that would buy it at anything like a fair price except one concern, the Maine Company, but Mr. Prince quickly said to himself, "Mr. Armour has got to be paid a fair price. I have got to keep his good will."

Some plans were worked on with the Department of Justice about issuing bonds of the Maine Company to buy Mr. Armour out, and the Department of Justice said no. Then the Maine Company tried the suggestion of taking preferred stock of the Maine Company, and the Department of Justice said no. And in the end it became clear that Mr. Prince would have to buy the Armour stock and pay a fair price for it. That was done. Mr. Armour for his 20 percent interest in the Maine Company received, in the end, $2,300,000, $2,000,000 of which were bonds of the Maine Company, and $300,000 of which was cash.

Now, I want to take a moment to tell Your Honor how that transaction was put through, because it has an important bearing on this whole case. At that time, in 1922, F. H. Prince & Company have through the years been buying Jersey common for the Maine Company, as I have explained to Your Honor. The Maine Company owed even as late as that about 2½ million dollars to F. H. Prince &

Company for stock so purchased. F. H. Prince & Company had that stock in its possession, and, in turn, had pledged it on bank loans as any stock broker does with customers' securities to raise more funds to buy more stocks. When the $2,300,000 was needed for Mr. Armour, the Maine Company took $2,000,000 in bonds and $300,000 in cash and gave it to F. H. Prince & Company in payment pro tanto of the debt of the Maine Company to F. H. Prince & Company. It just about wiped out what the Maine Company then owed F. H. Prince & Company. Mr. Prince then took that from F. H. Prince & Company and handed it over to Mr. Armour, all, incidentally, under a plan that was filed in the United States Court working the whole thing out, and received from him his stock.

Now let us think for just a moment what the position of F. H. Prince & Company is. Its principal asset, and an interest-bearing one, by the way, had been this debt from the Maine Company of, roughly, 2½ million dollars.

The Member: Did you say that F. H. Prince & Company is a corporation?

Mr. Welch: No, it is a banking concern. We have agreed for purposes of this case that Mr. F. H. Prince and F. H. Prince & Company are identical; that is to say, it is wholly owned by F. H. Prince, the banking concern. On the other hand, it has a separate set of books; it is a unit of its own.

The Member: But it is an individual business?

Mr. Welch: It is an individual business, but Mr. Prince—

The Member: It is not a partnership, not an association, not a corporation, but an individual business?

Mr. Welch: There was another small partner in it, but we have said that it was still thoroughly dominated by Mr. Prince, and we have agreed as between Counsel that it should be treated as his personal business.

The Member: Technically, is it a separate taxpayer?

Mr. Welch: No.

The Member: So that its income is reflected upon the individual income tax return of Mr. Prince?

Mr. Welch: It is.

The Member: When you speak, therefore, of F. H. Prince & Company, I don't have to bear in mind any distinction between it and the individual person?

Mr. Welch: I think probably the answer is really yes, but I ought to warn Your Honor to this extent: F. H. Prince & Company was looked on by the New York Stock Exchange as a unit separate from F. H. Prince. For example, it was looked on by its customers as something other than F. H. Prince—

The Member: Well, who owns the Stock Exchange seat? F. H. Prince individually?

Mr. Welch: F. H. Prince, individually.

The Member: Was there any recognition of the fact that he was holding it or acting as the representative of the company, so that it was separate?

Mr. Welch: Certainly, certainly. That was fully recognized.

Bank loans, however, of which I am now speaking, were always made to the banking house of F. H. Prince & Company as if it were something entirely separate from Mr. F. H. Prince. But I wish to make my position clearer. We all know in reality, and we have agreed that it was F. H. Prince who owned F. H. Prince & Company. It was another name for him, but it was a business with customers, with bank loans, with Stock Exchange relationships, and run as a banking and brokerage house.

The Member: I am trying to get in my mind the difference between F. H. Prince, individually, as a shareholder of this Maine Corporation, and F. H. Prince & Company as the party to the several financial transactions such as

the pledging of the shares, and the transaction with Armour and others. If I am to keep any thing of that sort separately in my mind, I want to know it, and, if, on the other hand, there is no harm in my confusing the F. H. Prince & Company with F. H. Prince, I want to know that. That is all I am thinking about at the moment.

Mr. Welch: F. H. Prince had many activities as an individual not connected with F. H. Prince & Company; that is to say, he would become a large owner of stock, and I remember on one occasion he was receiver of a big railroad company. Historically, Prince & Company was a unit and dealt with as a unit, and something of some interest may develop, Your Honor, from that point of view, but no one is trying to claim that it was anything other than F. H. Prince, because he did own it all.

Now, as I have said, when that $2,300,000 was paid by the Maine Company to F. H. Prince & Company, it discharged pro tanto, and, in fact, almost entirely the debts then owed by the Maine Company to F. H. Prince & Company for having acquired these Jersey common shares. At the same time, those shares, as I think I have said, were pledged on bank loans of F. H. Prince & Company, and when the $2,300,000 in bonds and cash comes out of the Maine Company, it goes to Mr. Armour, and it leaves Prince & Company, F. H. Prince & Company minus its large asset of this debt from the Maine Company, interest-bearing, by the way, on the one hand, and on the other hand it leaves it with those Jersey shares pledged to banks, which shares belong to the Maine Company and must in time and in some way reach there.

And so what happens is this: That as the years go on, F. H. Prince & Company reduces its bank loans and frees that Jersey common and delivers it to the Maine Company, but in order to do so, in the end, it is necessary for the

Maine Company to lend money to F. H. Prince & Company to free that Jersey common and get it into the hands of the Maine Company. It is only fair to say that the Armour deal in 1922, and this $2,300,000 going out seriously cut into the financial set-up of F. H. Prince & Company, and except for these loans by the Maine Company to F. H. Prince & Company to free that Jersey stock, I see no simple way in which it could have been done.

Now let me pass that for a moment and come to what is at long last, I hope, the end of the packer trouble. By 1932 Mr. Armour is dead, and Armour & Company is being run by some one else, and Armour & Company begins to go out into the country and buy its livestock direct from farmers and producers, and bring it into Armour & Company and by-pass the Chicago stock yards, paying no unloading, feeding, watering charges. They are under contract, curiously enough, not to do so, because in that old 1890 contract, while I said it was for—1892 contract, although I said it was for a period of 15 years, there is a single covenant that is not limited in time, by which Armour & Company agrees never to operate a stock yards—never to operate a stock yards in Chicago. And yiu assume that the little yard where stock is Chicago. And if you assume that the little yard where stock is unloaded and immediately taken by truck to Armour & Company is a stock yard, they are violating that old covenant when they threaten to buy in that way.

But, in any event, Mr. Prince made up his mind that this method of doing business, already, to some extent, operated by Swift & Company, and now threatened by Armour & Company, was a bad thing. He thought it was bad for the Maine Company, because it meant reduced revenue. He thought it was bad for this market, because unless that great big market was maintained with competition for the purchase of livestock, the time may readily come when the

packers would have the producers at their mercy if they could buy directly from them, and from them only, and not have to compete in this big market.

Not only that, Mr. Prince felt that the practice was bad for Armour & Company, because if the market at Chicago was destroyed for any reason, and there are lots of competitors farther west, that the packing plants, themselves, would go down in that destruction.

And so Mr. Prince, in 1932 and 1933, bought into Armour & Company, bought voting stock in Armour & Company, and not only that, F. H. Prince & Company, as a brokerage house in good standing, canvassed the market for proxies, and got all it could, and, as a consequence of that, Mr. Prince has been elected to the board of Armour & Company, chairman of the Board.

Now that again required a million dollars, and a million dollars and over came from the Maine Company, in the form of a loan to F. H. Prince & Company, and they went out and acquired the stock.

I do not suppose I need point out that the Maine Company felt that it couldn't buy the stock directly, because many own stock in the Maine Company, it would seem a natural corollary that the Maine Company couldn't own stock in Armour; but Mr. Prince felt, and indeed was correct, I think, in thinking that he personally could own it.

So, I mention those transactions, if Your Honor please, because they resulted in something that looked like loans, and, in fact, are loans, from the Maine Company, this taxpayer, to F. H. Prince, or F. H. Prince & Company.

I am pointing out to Your Honor this early in the case, however, that in no sense are those loans substitutes for dividends, but that those loans were made to enable F. H. Prince & Company, or F. H. Prince, to do something on be-

half of the Maine Company that for some reason it could not do itself.

The original Armour transaction, for example—the Maine Company tried by every device it could to deal directly with Mr. Armour, and buy his stock, and was forbidden to do so by the Government, and so the money was furnished by the Maine Company through F. H. Prince & Company, and then as a consequence of what I said to you, loans in substantial sums were necessary to lift that Jersey common, or free it from these loans of F. H. Prince & Company.

With a single, and I think a quite trifling exception, everything that has been borrowed from the Maine Company has, as I have pointed out, been used for purposes of the Maine Company, and everything that has been borrowed by Mr. Prince personally has been instantly turned in to F. H. Prince & Company.

And I might add that since 1927 practically the sole activity of F. H. Prince & Company is to act as the servant of and the agent for the Maine Company in such things as searching for Jersey's common, buying it as a broker, running the campaign of buying into Armour & Company, getting proxies to vote stocks, and things of that sort.

As early as 1927, Mr. Prince, who seems among the wisest of men, thought that he saw trouble coming, and although F. H. Prince & Company was doing a very sizable brokerage business with many customers, he issued instructions that he wanted everything pulled and the sails reefed, and, among other things, he issued instructions that he wanted all the Jersey common got out of bank loans and into the hands of the Maine Company where no storms such as came along in 1929 to 1932 could hurt it.

Now, one last and very serious interruption to Mr. Prince's program is represented by the Live Stock National Bank on this chart. As I said to Your Honor in my opening,

there was prior to 1932 in Chicago a bank that was doing business that was identified in the public mind with the Chicago Stock Yards' enterprise, although that was not, in fact, true, it was just located at the entrance to the yards, but every buyer, every trader in live stock that had gone on some freight train in the West and gone to the stock yards, had sold his stock and dealt with the commission man, and they had gone over to this bank to do business, and every single one, no doubt,—that will be the evidence, I believe,—thought it was part of the enterprise.

Now that bank got into serious trouble, as most banks did, and when the moratorium came it was closed, and it could not reopen. There is more to the story in the sense that there were two failures really, one reorganization in the second one, but I will telescope them for the purpose of this opening, and, as a consequence, Mr. Prince made up his mind that in order to protect the reputation of the yards throughout the country, and to save this enterprise from a black eye from which it might never recover, it was necessary to go to the rescue of that bank, and that was done. And in the end slightly over ten millions of dollars of the Maine Company, and of its subsidiaries, was poured into that situation to save that bank, some in the form of purchasing stock of the new bank, and millions of dollars in subordinated deposits, secured only by the worst layer of collateral, or investments, in the bank.

There will be testimony that when Mr. Prince was told that he had to do that, that he had every one that was working on it try to get money from the yards, or from any source that he could, that he said to them, "I don't want to use the Maine Company money if it can possibly be avoided in view of the needs of that company." But, in the end, it was necessary to do so, and that money went in, result-

ing in the Live Stock National Bank of Chicago appearing on this chart.

And then there was an interesting thing about that. When it was all done, and the subordination agreements entered into, Mr. Prince insisted that the Maine Company's money should come out first of all. So that when 1940 came around, and he had this problem of bringing this Jersey Company to the end, the Maine Company would get out of that bank situation, first of all, its funds, so that there would be no delay in them filtering up through the other companies, but that they would have it as quickly as they could.

That, I think, is a fair outline of what the Petitioner in this case will show. The evidence will be that the Maine Company is not a mere holding company, that it is far from it, that it dominates and directs the whole enterprise.

We will show that at no time did Mr. Prince ever have any intention of evading the imposition of a surtax, and that throughout the years, again and again, by declarations, and by acts, he made his intention clear, and we will show that in no sense have the earnings been accumulated beyond the reasonable needs of its business, because we will show that the cogent need for money in 1940 was present, and that Mr. Prince has steadily planned for that need, and that his plan for 1940, based upon a reasonable dividend, has been adhered to steadily since as early as 1911 and 1912, through thick and thin, depression or no depression, and is adhered to today, and that even today while we hope the goal is in sight it certainly has not yet been passed.

The Member: What—I am surprised there isn't any copy of the notice of deficiency appended to the petition. What is the reason for that?

Mr. Welch: That—I cannot answer that—it was filed—by not—Mr. Green, I think— It can be produced.

Mr. Green: The copy of the deficiency notice is on the copy that I have.

The Member: Not a part of the petition; there is the petition and the verification.

Mr. Green: Mr. Moyer had charge of that, Your Honor. He said the notice was filed with the petition.

The Member: I see it was filed as an amendment to the petition.

The petition was filed on April 23, 1936, and the notice of deficiency, if that is what it was, filed on May 29, 1936. I am looking at it, Mr. Welch, only, or asking about it, only for the purpose of ascertaining what it was that the Commission determined in this case as the basis for the deficiency.

Can you say that?

Perhaps I misunderstood it, but the thing I am looking at which I have already referred to, seems to be notice of deficiency, doesn't seem to me, at a hasty glance, to make any reference to section 104.

Is that correct?

Mr. Moyer: Simply makes a computation of the tax liability, Your Honor, without any reason set forth for the imposition of the section 104 tax.

The Member: What is it that leads you to believe that 104 was invoked by the Commissioner as a basis for a determination of the deficiency?

Mr. Welch: The amount of the tax—

Mr. Moyer: There is a statement made to that effect.

The Member: Where?

Mr. Clark: It is on the first page of the computation, Your Honor, and the last paragraph before the details of the computation for the year 1930, if Your Honor has it before you,—"After consideration of your federal income tax returns, the protest mentioned above, and all the avail-

able information, the Bureau holds your corporation is subject to taxation under section 104 of the Act of—"

The Member: Is that the whole determination?

Mr. Welch: That is the whole determination.

Mr. Clark: At the—

The Member: I mean there is no determination that would give us an indication as to whether it was because a holding or investment company, or whether because it has an unusual accumulation of earnings, or any other factual determination that would lay a foundation for 104.

Well, what about the—the petition, then, in so far as it states an issue? I do not want these issues to be floating in mid air purely because there happens to be a section called 104 in the statute.

What are the issues that were made, Mr. Welch, in the petition?

Mr. Welch: I may—

The Member: What is it, in other words, that has been alleged and denied which makes an issue under section 104?

Mr. Welch: I am a little puzzled as to what has been alleged, but—

The Member: Well, that is your moving instrument, isn't it? Your petition is what contains the—

Mr. Welch: I mean by that, alleged by the Commissioner.

The Member: Well, there isn't any—unless there are affirmative allegations in the answer. I am talking about the allegations of the petition.

Mr. Welch: Will you wait—if Your Honor please, the petition was drawn by Mr. Moyer's office, so that I—

The Member: I would like to have from—and this is the time to get it—from both sides, a statement of the issues as they have been plead, as they appear of record, so that

we may know precisely what the questions are to which this evidence is to be directed.

I have got to tie this narrative statement to something, and that is the way I want to do it.

Mr. Moyer: Your Honor, may I speak on that?

The Member: Yes.

Mr. Moyer: I think we have covered every possibility under section 104. The alleged error on the part of the Respondent that the petition was in any manner formed or availed of for the purpose of avoiding the imposition of surtax on the shareholders, is erroneously asserted to the full extent that it is in any way, manner or form based upon the theory or assertion that the petitioner is a mere holding or investment company, or that its gains or profits were permitted to accumulate beyond the reasonable needs of the business.

The Member: Those are in your assignments of error?

Mr. Moyer: Those are in our assignments or error.

The Member: Now where are your alleged abundant facts on which we will decide this case?

Mr Moyer: Shall I read the facts?

The Member: Yes, if you please.

Mr. Moyer: First, the Petitioner alleges that it did not in any of the years 1930, 1932, or 1933 violate the provisions of the Revenue Act set forth in '32 under Section 104 thereof.

The Member: I don't think that quite touches it. Do you have the facts I want, Mr. Moyer?

Mr. Moyer: That, of course, is a preamble to the facts, and we cover particularly, I believe, the same grounds that Mr. Welch has covered in his opening statement, setting forth the corporate set-up of the various organizations.

I am reading— Have you a copy, Your Honor of the

The Member: Yes.

Mr. Moyer: I am reading on page 6: "Petitioner next alleges that such portion of its gains and profits for the years 1930, 1932, and 1933 as were not divided or distributed in these years were not permitted to accumulate for the purpose of preventing the imposition of the surtax upon its shareholders."

The Member: I don't see that. Did you say page 6?

Mr. Moyer: Page 6.

The Member: On page 6, I have sub-division with a capital "I," and paragraph beginning "Petitioner's Incorporation" and another paragraph beginning "Organization of Petitioner."

Is that your page?

Mr. Moyer: May I refer you to page 8?

The Member: Of item 2?

Mr. Moyer: Item 2.

The Member: Two aught.

Mr. Moyer: Two aught, that is right.

But I believe the fact that the resume in this petition covering facts is in line with Mr. Welch's presentation of the facts this morning—

The Member: Well, his presentation, I suppose he might have made that presentation in the history of this organization and to support any one of a thousand possible litigations; but I am trying to find out how to tie it up now to the issue in this case.

Mr. Moyer: Well, I will be glad to read these facts.

The Member: Well, I don't want you to read. I would like to get in my mind, as quickly as possible, how to tie this narrative statement which I have tried very hard to follow, up with a concise and succinct statement of what the significance is in this case.

So far—

Mr. Moyer: Your Honor—

The Member: —I don't know whether it has any significance, whether it refers to section 104, or anything else. I have heard Mr. Welch say that there is no holding or investing company or no earnings that were permitted to accumulate beyond the reasonable needs of the business. *Is that the* issue, and if so where is it made?

Mr. Moyer: Your Honor, that is the issue. The only particulars on which the Petitioner was able to file a petition was a statement that Mr. Clark read from the deficiency-notice. There were no particulars in the deficiency notice, and in the petition an attempt was made by facts to cover the various phases that are comprehended within 104.

The Member: Well, perhaps it is up to Mr. Clark to tell me what the Commissioner meant by his determination. Are you through, Mr. Welch? I didn't mean to interrupt you.

Mr. Welch: Oh, I am.

The Member: You have made your statement now, have you?

Mr. Welch: Yes.

Mr. Clark: Your Honor, the position of the Commissioner is set forth in the deficiency notice. It resulted, as I understand, from the fact that there were long negotiations with the Bureau prior to its issuance, and I think that there was no misunderstanding at the time that letter was issued. All of the allegations which Petitioner has made relative to the activities of this corporation as in possible violation of 104 have been denied by the Respondent. What happened was that the Commissioner determined these various substantial deficiencies for the years 1930, 1932, and 1933 in amounts varying from somewhat

over a million to nearly two million dollars, with a total of somewhat over four million dollars.

In determining those deficiencies, the Commissioner held that the Petitioner was subject to taxation under section 104. Now, all the testimony is reduced either in major portion, I think, as it is applicable to the facts set forth in the stipulation of facts, and such other evidence as may be material in addition thereto which will be adduced by either side.

The Member: I haven't section 104 before me, but drawing on my recollection of it, isn't it true that section 104 contains two or more alternative possible grounds?

Mr. Clark: Yes, that is true.

The Member: For the 50 percent addition to the tax? One of which, for example, under one letter is that the Petitioner is a mere holding or investment company, and the other one, that it is—no. Then there is one that has to do with the unreasonable accumulation of earnings which is said to be the prima facie evidence of the purpose to escape the tax.

What I am trying to do is to fix such a notice of deficiency as this is leaves one in very serious doubt as to what it is that the Commissioner is undertaking factually to determine, and if we are to attach to the Commissioner's determination the presumption of correctness, it would seem to me that there must be some determination to which to attach to it, and the presumption doesn't go to a proposition of law; it goes to a question of fact.

I should think that you can't send out a notice, that is, properly send out a notice of deficiency which is in the nature of a shot-gun notice, saying 104, 50 percent. Now, that is substantially what this comes to, and when we get to the point of litigation it is important that the tryer, at

least, shall know to what the evidence in the case is to be addressed.

Mr. Clark: I wouldn't say, Your Honor, that presumption went solely to questions of fact. I think that it is also a presumption as to a matter of law that the Commissioner is correct in his determination. Now, I will grant you that there are certain deficiency notices which are sent out which are not complete and not what we would like to see, but I see no defect in this notice.

The Member: Well, the only defect is the difficulty of comprehending what it is that the Government has determined as the reason why a taxpayer is called upon to pay a very substantial deficiency, and I am not speaking in terms of procedural criticism so much as I am speaking in terms of the difficulty that I, as a primary tryer of the fact, has in understanding what the question is that I am being called upon to decide. If the Government is saying that the 50 percent penalty is to be imposed for one or the other of several reasons, that would eliminate from my thinking entirely the reasons which the Government does not think are necessary to a consideration. If, however, the Government is sending out a notice that is so general in terms that it may comprehend everything and then intends to rely upon everything that may possibly be comprehended, then I have got to approach this case in quite a different attitude of mind and a very much more difficult one and not one as happy.

Mr. Clark: Will Your Honor excuse me just a moment? (Pause.)

The Member: Let that question go for the time being. Suppose you start with whatever opening statement you intended to make, Mr. Clark.

STATEMENT OF CASE ON BEHALF OF THE RESPONDENT.

Mr. Clark: My opening statement, Your Honor, will be very brief, indeed. I merely wanted to point out in addition to what I have already said, that it is the position of Respondent that Petitioner is a mere holding company under 104(b); that it has accumulated a surplus beyond the reasonable needs of the business; that it had in the taxable years here involved large cash balances in banks; that the amount of capital paid in was relatively small; that the surplus accumulated on that capital was approximately twenty-five to thirty times thereof; that a large portion of the Petitioner's earnings were loaned to the controlling stockholder during a long period of years; that a portion of the surplus funds were utilized in the purchase of securities from the controlling stockholder, enabling him to claim large losses on the individual income tax return; and that the controlling stockholder made a substantial gift in 1932 of an interest in Petitioner's stock only three days prior to the signing of the Revenue Act of 1932, which Act greatly increased surtaxes and placed a tax on gifts.

The Member: Greatly decreased, don't you mean? It would decrease.

Mr. Clark: Increase.

The Member: What do you mean? I don't understand that.

Mr. Clark: Well, there was in increase in surtax rates throughout the provisions of that Act. That is what I mean.

The Member: Yes, but do I understand you to say that this individual did this for the purpose of increasing his surtaxes?

Mr. Clark: No, indeed.

The Member: Well, that is what I thought you said. That

is the reason I didn't understand it. Give me the thought now.

Mr. Clark: Well; what he did was to make a substantial gift of Petitioner's stock, the Maine Company stock.

The Member: Yes.

Mr. Clark: By which he avoided an increase in surtaxes.

The Member: Oh, yes.

Mr. Clark: I am sorry I didn't make myself clear, Your Honor.

The Member: That is what I thought you meant.

Mr. Clark: Now, on those points Respondent in general relies. Other than that I have no further opening statement.

The Member: Mr. Welch said in the course of his statement, that he thought no one would contend that the Petitioner was formed for the purpose as outlined in the statute. Did he correctly say that as to your own attitude?

Mr. Clark: I think so, Your Honor. I would be definitely inclined to agree that as far as the formation of petitioner is concerned, it is not within the statute.

The Member: So that at least we can narrow the issue to the determination of whether or not this corporation was availed of to enable the shareholders to escape the application of the surtax.

Mr. Clark: Yes.

The Member: And the two subdivisions of the statute are regarded by the Commissioner as determining the 50 percent tax, namely, in that this is a mere holding or investment company, and, in addition to that, that its earnings were permitted to accumulate beyond the reasonable needs of the business.

Mr. Clark: Yes.

The Member: And is there any specification--

Mr. Clark: Yes, I think that is right, Your Honor. There are many facts which may be developed in support of that, but I think those are the two sections.

The Member: I am familiar enough with these cases to know that there are various diversifications of fact which might cause the statute to apply or not to apply, but I want to get it as definite when I start as I can.

Let me ask you again: Is it possible for the Government to specify section (b) of the statute as to whether it is regarded that the Petitioner here is a holding company on the one hand, or an investment company on the other? As you know, the Board has at one time talked about investment company. Some of the decisions talk about investment companies; some of the decisions talk about a holding company.

Mr. Clark: Yes.

The Member: And I would like to know, if I can, what the Commissioner thinks this is, if he has any thought on that subject at this time.

Mr. Clark: I don't think, Your Honor, that the Commissioner has any definite thought on that at this time. I wouldn't want to commit myself in that regard, because there is too much testimony that will come out. I couldn't say.

I have nothing further to say.

Mr. Welch: Does Your Honor feel that we should open the testimony now or do whatever may be done about the stipulation?

The Member: Well, I have no thought about it at all.

Mr. Welch: I am prepared—

The Member: Generally speaking, I shall conduct this hearing by sitting from 10 o'clock in the morning until a quarter of one, and then from a quarter after two until about four-thirty, with whatever adjustments there are

necessary by the exigencies of the trial. But that is my general purpose. Now, that means that we have half an hour left to utilize, if it can be utilized to advantage.

Mr. Welch: I am ready with witnesses.

Mr. Clark: But it would seem to me, Your Honor, with this stipulation still a bit in the air we ought to clean that up first and then we have the decks cleared.

The Member: Is that anything more than a mere formulation of facts which have been stated here?

Mr. Clark: Oh, yes, there is something more to it than that, and then we will be glad to go ahead this afternoon, so far as I am concerned.

The Member: Then we will suspend now until 2 o'clock this afternoon.

(Whereupon, at 12:15 p. m., a recess was taken until 2 p. m. of the same day.)

Afternoon Session.

The Member: You may proceed.

Mr. Welch: If Your Honor please, I am now ready to file the stipulation in this case (handing document to the Clerk):

The Member: It will be filed.

Mr. Clark: No objection.

The Member: It has been filed.

Have you both signed it?

Mr. Welch: Yes. And with it, two volumes and exhibits attached thereto; the first volume running from one to twenty-eight, and the second volume from twenty-nine to sixty-nine. I have no intention of reading the stipulation. It is pretty dull going.

May I ask Your Honor if it would be a convenience to file it in duplicate?

The Member: If you have an extra copy, I think it would be more convenient to have it. It is not necessary to file a duplicate set of exhibits, however.

Mr. Welch: Oh, no; we don't intend to do that. I thought you were referring, however, to exhibits that were introduced.

There will be some exhibits introduced from time to time in addition to the stipulation.

The Member: Yes, I know; I mean the stipulation exhibits, I think it is unnecessary to file a duplicate set of them, but I am glad to know you have them in case we need them so that I may ask for them.

Mr. Welch: Some witnesses will use the stipulation, and it will be a convenience just mechanically to have a second one so that Your Honor may follow that as the witness testifies, from time to time.

The Member: Very well.

Mr. Welch: At the moment, I will leave both of them here, two copies of the stipulation on file; one copy with all the exhibits and the second with exhibits in reserve if Your Honor feels at any time you want them.

Then, if I could, I should like to have what I call the family tree marked.

The Member: I wonder whether it would not be useful, and convenient, if you were to state briefly the contents of the stipulation so that we might be able to have in mind some idea of what the stipulation contained.

Is it simply a formal setting forth of the facts that you stated here in your opening statement as to the interrelation of these corporations, and their history, or does it go beyond that?

Mr. Welch: It goes beyond that, and I observe my friends at both tables smile when Your Honor suggests a short statement of what is in them.

They have in them, I should say, most importantly, the income statements and balance sheets of all the companies. These will be of interest, I am sure, to both sides.

In addition, they have, and this accounts for the bulk and enormous number of contracts and documents, for example, Your Honor will remember my mentioning contracts that were made with the packers this morning; those are in there. All sorts of documents which by any stretch of the imagination counsel on either side may want to refer to in argument or in briefs are there.

Nobody has any ambition, I think, that any one on your side of the desk should ever sit down and read it through. It is hoped that we will call attention from time to time to those parts of it that someone will need to look at, and, as I stated, I think, this morning, it is my personal belief that page after page may never be looked at by Your Honor, or any other Board member.

I don't know that there is anything to be gained by trying to tell you, beyond that, what is in it. It just has everything in that anybody on either side of the case thought that somehow or someway might become material. I do not think that is a very happy statement, but that is about the way it stands.

Then could I have the chart of the corporations that I have used marked as Exhibit 1,—if that is the numbering to be used?

The Member: Now these exhibits which are appended to the stipulation, I take it, have all been marked expressly with the term "Stipulation"?

Mr. Welch: Yes, they have the letter "S."

The Member: So that there is no—they are all "S" something?

Mr. Welch: "S-1," and so forth. Other ordinary ex-

hibits I had supposed would be marked numerically, beginning with "1."

The Member: Well, our common custom is to make all the Petitioner's exhibits with a number, consecutively, and all the Respondent's exhibits with a letter, and all joint exhibits with a letter and a number.

Now, you have got a letter and a number now which is called "S" something or other. Now, if—and it is "S" and "S" only, is it? It is not "SIGP"?

Mr. Welch: It is "S" only.

The Member: Well, as long as the record is clear, I want to be sure that those are stipulation exhibits. We will have to forego the use of the letter "S" in marking Respondent's exhibits.

Mr. Welch: I observe.

Could I then have the chart marked as an exhibit?

The Member: Let the chart be marked as Exhibit 1.

Mr. Clark: That may go in, Your Honor, except for this fact: I would like to call attention for the record to the fact that it is Respondent's understanding that the Pau Corporation, so-called, if I am pronouncing it correctly—it is on the right—and second therefrom, and which apparently is put in Chicago Stock Yards Company, was in its answer.

The Member: On the right? The Power Company?

Mr. Welch: It is here (indicating).

The Member: Did you say the Power Company?

Mr. Clark: Pau,—P-a-u.

The Member: Oh, oh, Pau Company. I thought you said the Power Company, and that would relate to the one on the left. Apparently we have got to be very careful now of our language because we are in a complex situation.

All right, now you are talking about the Pau Company. Now, what about that?

Mr. Clark: That that stock was owned entirely by Mr. Prince. Now, I understand that there will be oral testimony introduced to show the contrary to that, but I simply did not want it to appear from here, without comment, that that was owned by Chicago Stock Yards.

The Member: Well, as I understand it, this exhibit is not being—this chart is not being offered as an exhibit as proof of all the facts that are stated in the exhibit, but only as some aid to the Board in getting a visualization of the inter-relation of these corporations, one with another. Is that correct?

Mr. Welch: Precisely. We felt—.

Mr. Clark: If that is so, then I haven't any further comment.

The Member: Very well. Let it be marked as Petitioner's Exhibit No. 1.

[The document referred to, so offered and received in evidence, being a chart, was marked "Petitioner's Exhibit 1," and made a part of this record.]

Mr. Welch: Well, as Exhibit No. 2, I should like to put into evidence the lease of the Railway, which I mentioned in my opening, which is the lease to the New York Central Railroad Company. It has been kept outside of the stipulation, or, more accurately, the exhibits attached to it, purely because of its bulk, and it is agreed by Counsel that we would offer it separately, and I now offer it.

Mr. Clark: No objection.

The Member: Received as Petitioner's Exhibit No. 1.

[The document referred to, so offered and received in evidence, being a lease to the New York Central Railroad Company, was marked "Petitioner's Exhibit 2," and made a part of this record.]

Mr. Welch: Mr. Leonard.

Shall we swear all of the witnesses all at once or one at a time?

Mr. Clark: Just a moment, if Your Honor please. Mr. Pierson wants to make a statement.

Mr. Pierson: By agreement of Counsel, Your Honor, and in addition to the facts as they have been stipulated, there are one or two more facts which I will read into the record, and I understand it is agreed to by Counsel on the other side.

In 1925 the Maine Company acquired the 1552 shares of C. M. D. Company issued to Armour & Company for $500,000. The Maine Company sold the 1552 shares in 1930 for $26.92.

The Member: Just a minute. Aggregate or per share?

Mr. Pierson: No, aggregate. The balance of the cost was charged off the books of the Maine Company at the time of the sale.

The Member: Is that agreed, Mr. Welch?

Mr. Welch: That is agreed.

The Member: Now, one more thing: I want to get the machinery of this trial simplified.

Customarily we want to restrict the examination of any one witness to one counsel on either side so that there will be no conflict and no confusion about that, and I will ask you all to bear in mind it is going to be confusing when you have several counsel on each side, anyway, and not have that confusion to exist any more than possible.

Mr. Clark: That, however, will not preclude conference between counsel, will it?

The Member: Oh, no. If the time comes when you get this huddle system to an exasperating point, I will have to stop it, but until that time comes you can handle your affairs any way you want to.

Are you ready to call your witness?

Mr. Welch: I am.

Mr. Leonard.

EVIDENCE ON BEHALF OF THE PETITIONER.

Thereupon, the Petitioner, to maintain the averments of its petition, introduced the following proof:

ARTHUR G. LEONARD,

called as a witness by and on behalf of the Petitioner, and, having been first duly sworn, was examined and testified as follows:

Direct Examination.

Q. 1. (By Mr. Welch). Your name, Mr. Leonard? *A.* Mr. Arthur G. Leonard.

Q. 2. Where do you live, Mr. Leonard? *A.* Chicago.

Q. 3. What do you do? *A.* I am president of the Union Stock Yards and Transit Company.

Q. 4. Are you also a member of its board of directors? *A.* I am.

Q. 5. Are you connected with any of the other companies that go to make up the enterprise? *A.* I am.

Q. 6. With what other companies and in what way? *A.* I am president of the Chicago Junction Railway Company and president of the Chicago Junction Railroad Company. I am a trustee of the Central Manufacturing District—

Mr. Clark: Just a moment, gentlemen; this is moving too fast for me to keep track, if you don't mind.

Mr. Welch (Addressing the witness). My brother, Mr. Clark, finds it a little difficult to go as swiftly as you are.

The Member. Mr. Clark, I am afraid we cannot let this go as slowly as that.

Mr. Clark: Very well.

Q. 7. (By Mr. Welch). Have you told us all the companies you are connected with, sir? *A.* I am president of the Produce Terminal Company and also president of the —I guess that's all.

Q. 8. I think you started to say something about Central Manufacturing District. A. I am trustee of the Central Manufacturing District.

Q. 9. How about the New Jersey Company? A. I am a director in the New Jersey Company.

Q. 10. Did you hold these same offices and have the same duties in 1930, 1932, and 1933 that you now hold, and have? A. I did.

Q. 11. Directing your attention to the Transit Company, what does that company do? A. Union Stock Yards and Transit Company conducts the business of managing of the yards.

Q. 12. That is the stock yards? A. The stock yards proper.

Q. 13. And what are your duties in connection with that company? A. Well, I am in charge and responsible for the direct operations of that company.

Q. 14. When did you first become connected with the stock yards? A. In 1899.

Q. 15. And in what capacity, Mr. Leonard? A. I went there as general manager under the then president, Mr. J. A. Sporr.

Q. 16. What had been your business experience prior to that time, Mr. Leonard? A. I have been connected with the New York Central in the operating department in an executive capacity.

Q. 17. Did that experience have anything to do with your going to the stock yards? A. It did.

Q. 18. What did it have to do with it? A. Well, one of the principal enterprises of the stock yards at that time when I went there was the management of the Chicago Junction Railway. I went there practically to manage and direct that part of the live stock business.

Q. 19. Incidentally, Mr. Leonard, I think you prefer that

I do not ask you how old you are, is that right? A. That is right.

Q. 20. Well, will you tell me, Mr. Leonard, whether or not when you went out there you informed yourself as to the history and development of the stock yards? A. I did.

Q. 21. Would you tell us, Mr. Leonard, as shortly as you reasonably can, what had been the history and development of the yards? A. Well, the Chicago Stock Yards and Transit Company was organized by the railroads in 1865. Prior to that time there were a number of smaller yards in Chicago; also a number of yards that were connected with the railroads. Each railroad had endeavored to have its own stock yards. These yards were all ill eqüipped, small and inadequate. There was no central place where all of the live stock could be sent so as to develop a real market for live stock.

Mr. John B. Sherman, who owned the Sherman Yards at Thirty-first Street and the Lake, induced the railroads to get together and organize a union as Central Union Stock Yards, and also to build a belt line to connect these yards with the various railroads. This belt line was known as the Inner Belt. At that time land was purchased on the site where I now do my work. A charter was obtained from the Legislature of the State of Illinois authorizing the incorporation and operation of a stock yards, and it has been a stock yards in continuous operation there, to this day. They also authorized the construction and operation of a railroad, and that road is still in operation today.

Mr. Welch: Could I see the charter a moment, Mr. Green?

(A document was handed to Mr. Welch.)

Q. 22. (By Mr. Welch). I have here, Mr. Leonard, as S-1. of the exhibits attached to the stipulation, a copy of that charter of the original Stock Yards Company. Does that

check with your recollection of what you have just told us? A. Yes, it does.

Q. 23. Could I ask you, Mr. Leonard, if there was anything about that charter that was early called to your attention? A. There was.

Q. 24. And what was that? A. That was—you will find some place in that charter a clause limiting the borrowing power of the corporation to $500,000.

Mr. Welch: Without bothering to read it, I will call Your Honor's attention to the fact that it is section 10 of the charter.

Mr. Clark: I am sure Mr. Welch doesn't want the witness to characterize this. He is just saying this was called to his attention.

Mr. Welch: Yes.

Mr. Clark: Do you intend to go any further than that?

Mr. Welch: No, no. I have said all I intend to say about it at this point.

Q. 25. (By Mr. Welch). I should like to ask this witness if the limitation on borrowing power has ever been changed?

Mr. Clark: Well, of course, to that I would object.

Mr. Welch: That seems to me a material fact.

The Member: You object? Why?

Mr. Clark: Because if there have been any changes, it should be proved by documentary evidence, Your Honor.

Mr. Welch: Well, you see, the proof of a negative by documentary evidence is difficult.

The Member: The objection is overruled. The witness may answer the question.

Mr. Clark: May I have an exception to that?

The Member: Yes.

Q. 26. (By Mr. Welch). Has that provision in the char-

ter limiting the borrowing power ever been changed, Mr. Leonard? A. It has not.

Q. 27. Mr. Leonard, when you arrived in Chicago, was there only one corporation then in existence, or was there more than one? A. Oh, there were three corporations in existence.

Q. 28. And what were those three? A. The Union Stock Yards and Transit Company, the Chicago Junction Railway Company, and the Union Stock Yards—the Chicago Junction and Union Stock Yards, which we commonly term the Jersey Company.

Q. 29. Those three were then in existence? A. Those three were then in existence.

Q. 30. What was then the relation of the Jersey Company to the others? A. Well, the Jersey Company owned all of the capital stock of the Railway Company, and at that time it had over 98 percent of the capital stock of the Transit Company.

Q. 31. Are you familiar, Mr. Leonard, with the history of the formation of this New Jersey Company? A. I am.

Q. 32. Will you tell us shortly just what the history of the formation of that company was? A. Between 1865 and 1890 the Chicago Junction—the Union Stock Yards and Transit Company had become a very successful corporation. It was a central and the largest stock yards in the United States. At that time the railroads did not run through Chicago, nor do they to this day. The Transit Company after it had become—after they had organized it, built a railway which was called the Inner Belt to connect the Chicago Stock Yards with the various railroads in Chicago. After the Transit Company had been formed, it operated these railroads until 1897, and in 1897 it leased to its railway operations—leased its railway operations to the Chicago & Indiana State Railway. That was known as

The Inner Belt. At the same time, the Jersey Company had caused to be organized an Outer Belt known as the Chicago, Hammond & Western Railroad. In 1898 both these roads were consolidated into the Chicago Junction Railway, and the Jersey Company owned the entire stock of the Chicago, Hammond & Western, and also had the lease of the Chicago Junction Railway—lease of the Chicago & Indiana State Line Railway.

Q. 33. Mr. Leonard, I was directing your attention more closely at the moment to the formation of the Jersey Company and the reasons that led to its formation, and so that you will know what I am talking about, may I ask you whether or not there had grown up between 1865 and 1890 a large packing industry near the stock yards? A. There was a very—the packers naturally clustered about the stock yards, and where there was a large amount of live stock ready for slaughter. Naturally, there was excellent shipping facilities at the yards for the packers to ship out their finished product to the East, and the—

Q. 34. Could I direct your attention to the map for a moment and have you point out to us where the stock yards are and where the packers were? Can you see it from where you are, Mr. Leonard? A. I can.

Q. 35. Is this yellow portion on the map the stock yards, itself? A. The stock yards proper, yes.

Q. 36. And just to the west of it in these various colors is what? A. Packingtown.

Q. 37. And by "Packingtown" what do you mean? A. I mean that is where all of the packers have their plants, nearly all of them, not all.

Q. 38. Yes.

Now, between 1865 and 1890—strike that out. Is the period between 1865 and 1890 the period during which Packingtown grew up? A. Yes.

Q. 39. As a consequence of the packers moving there and getting their plants located there, did something happen in 1890 in respect to the possibility that they might move away? *A.* Well, in 1890 the packers had asked for a division of the spoils, or some of the gravy, as they termed it, at the time, and said unless they got some of this gravy they would move to other quarters. They purchased in Indiana a large tract of land and developed it at a cost of about a million quarters. They made a great noise about it, this purchase, and said that that was where they were going to go. About this time they also instituted several lawsuits. One was to compel the railroads to handle their freight without charge. The other was to have the stock yards declared a nuisance. In short, the whole thing developed into a big poker game for large stakes. The Transit Company didn't have sufficient funds to sit in this game because of the limitations that had been imposed upon it by the charter to $500,000. This $500,000 was only half of what the packers had put in as an ante for the Indiana land, and at that time the Jersey Company was formed. It had ample borrowing power and could raise the funds necessary to pay the packers the large amount that they were demanding as a bonus. In 1890 the Jersey Company had secured over 98 percent of the capital stock of the Transit Company. They raised the large sums of money and paid the packers the bonus and obtained from the packers a contract for them to remain there for 15 years.

Q. 40. Now, at that time, that was 1890 to 1892, was it not? *A.* Yes.

Q. 41. Were there a great many people working around the stock yards? *A.* There were a great many people working around the stock yards.

Q. 42. How did they get to work in those days? *A.* Well, they came by horse car, they came afoot, and by horseback.

Q. 43. Now, did something happen about 1902 which affected the whole railroad system in Chicago? A. Yes.

Q. 44. What was that, Mr. Leonard? A. Well, that was the Common Council of Chicago had passed an ordinance requiring that all the railroad tracks in Chicago, the City of Chicago, be elevated. That struck the Transit Company as well as the other Railroad Companies, and they were compelled to elevate the tracks, the freight tracks, of the road that they had leased.

Q. 45. Now, in connection with that elevation, was some thought given to building an elevated passenger line? A. There was. When the freight tracks were elevated, there was consolidated with the elevation of the freight tracks an elevated railway to carry passengers.

Q. 46. And is that a passenger line that now runs into this district? A. It is.

Q. 47. And, pointing to this map, Mr. Leonard, can you see from there (indicating)? A. I can see it.

Q. 49. Well, I congratulate you, sir. Is this line that I am now following a somewhat blue line? A. Well, that —that line is a—is of the older elevated type, the line to the west, the right from where I am sitting here was the freight tracks going out to the west, that of Illinois Central on the lake shore.

Q. 50. Going to the east, were they not? A. East, rather, yes.

Q. 51. This blue line comes in— A. It runs—

Q. 52. —through the stock yards, past the administration— A. Past the administration, through the stock yards, and runs around as a single track around the loop, around Packingtown.

Q. 53. Around Packingtown and back? A. Yes.

Q. 54. Now, Mr. Leonard, at the time of the erection of that elevated passenger line, when that was determined on,

was some estimate made of the probable cost of it? A. There was.

Q. 55. Do you remember, approximately, what the estimate was? A. It was about—it was $2,327,000.

Q. 56. Did the Transit Company at that time have sufficient funds on hand to build that line? A. No, it did not.

Q. 57. Could it borrow it? A. No, on account of the limitations in the charter.

Q. 58. Well, what was done, how was it gone about? A. Well, they organized the Chicago Junction Railroad Company.

Q. 59. Railroad Company? A. Railroad Company.

Q. 60. Yes. A. And obtained a charter from the State of Illinois to operate a railroad—to operate a railroad.

Q. 61. Well, when that company was formed, could it borrow money on its own credit? A. It could not.

Q. 62. Well, how was that difficulty met? A. They issued bonds of the Chicago Junction Railway—Railroad; that was guaranteed by the Jersey Company, which had a good credit.

Mr. Welch: Shall we call attention, Mr. Green, I think to the Exhibit "S-11."

Mr. Green: You have got it up there, Mr. Welch.

Mr. Welch: Oh, I beg your pardon.

We are all ready for it.

Q. 63. (By Mr. Welch). Calling your attention to S-11 of the exhibits attached to the stipulation—A. Yes.

Q. 64. —to the number I am now pointing to. A. Yes.

Q. 65. Is that the indenture to which you have referred? A. That is the indenture, yes; first mortgage.

Q. 66. Now about the time this happened was something done about a lease of this line? A. Yes. A lease was negotiated with the South Side Elevated Railroad which connected with all of the—pretty much all through Chicago.

Q. 67. Calling your attention to S-10 attached to the stipulation, is that this lease to which you have referred? A. To the South Side Elevated Railroad, yes.

Q. 68. Now, without plowing through the lease, is it correct, Mr. Leonard, that the rental to be paid under the lease was taxes and interest on the bonds that you have talked about? A. Yes.

Q. 69. Is that all the rental that was to be paid? A. That was all the rental that was to be paid.

Q. 70. Now, Mr. Leonard, did the new structure get built within the estimate that you have told us was made? A. No.

Q. 71. It cost more, did it? A. It cost more money.

Q. 72. Where did the additional money come from? A. Partially from the Jersey Company and partially from the Chicago Junction Railway Company which was authorized by the Jersey Company.

Q. 73. Now, you spoke of the fact that the Jersey Company guaranteed that bond issue. A. I did.

Q. 74. Has the Jersey Company ever been called upon to pay anything under that bond issue or by reason of it? A. It has.

Q. 75. What, to what extent? A. Well, in 1932, 1933, the South Side Elevated went into the hands of a receiver. They failed to pay their rental, and the Jersey Company, as guarantor, came forward and paid the rental and the last two years has been paying its taxes.

Q. 76. Now, may I ask you, Mr. Leonard, whether or not in 1932 and 1933 you could see any prospect that the Railroad Company would ever be able to meet this bond issue? A. No.

Q. 77. Mr. Green calls my attention to the fact that in the answer to the second preceding question you said that

the Jersey Company had paid the rental on the— A. I meant the Maine Company.

Q. 78. Did you mean rental or taxes? A. No, I meant rental. The rental had been defaulted by the South Side Elevated Railroad and the Jersey Company had guaranteed the bonds, and when the interest on the bonds came due, why, then, it paid the interest on the bonds.

Q. 79. I see. I think that is clear. Now, Mr. Leonard, I think you said at the outset of your testimony that you were president of the Stock Yards Harness and Saddlery Company; that is true, is it not? A. Yes.

Q. 80. Will you tell us about when that was formed, and why? A. Well, that was formed about 1903. At that time we were doing a very large horse business and it thought that the harness end of it could be developed into a profitable enterprise, but the automobile came around and killed it.

Q. 81. Now, at some time did the Transit Company go into the business of manufacturing steam and water, light and power, or distributing them? A. It did.

Q. 82. When did it first do that, Mr. Leonard? A. That was early in the game we did that.

Q. 83. Quite early in its history? A. Yes.

Q. 84. At some time did it begin to expand those activities so that it furnished these things to other companies? A. Yes.

Q. 85. As time went on what happened to that business? A. It developed into a rather large business; not alone did we furnish the light and power and heat to the Stock Yard Company, but also to Packingtown and to most of the occupants of the Central Manufacturing District, but in 1915 the State Utility Commission compelled us to incorporate and take out an incorporation and come under their jurisdiction.

Q. 86. So as a consequence of that Produce Terminal Corporation was incorporated and formed? A. Yes.

Q. 87. Who owned its stock, when it was formed? A. The Transit Company.

Q. 88. Who owns its stock, today? A. The Maine Company.

Q. 89. Now, may I take up with you, Mr. Leonard, the Central Manufacturing District.

You said, I think, you were one of its trustees? A. I am.

Q. 90. And how long have you been such a trustee? A. Since 1909.

Q. 91. Will you tell us what the Central Manufacturing District is? A. Well, it is the property just north and northwest of the stock yards.

Q. 92. Just wait a moment, if you will, Mr. Leonard, so that we can point it out on the map. A. Yes.

Q. 93. Here, I think— A. No.

Q. 94. Here are the stock yards (indicating on map). A. Those are the stock yards.

Q. 95. And here, in this colored portion with railroad lines all through it, is the manufacturing district, is it not? A. Central Manufacturing District, yes.

Q. 96. Also extending out here (indicating). A. Yes, along Pershing Road.

Q. 97. Would you mind, Mr. Leonard, giving us some idea of distances on this map? Take the stock yards, themselves. A. The stock yards run from Forty-seventh Street to Thirty-ninth Street, and that is a mile long.

Q. 98. A mile long? A. Yes, and the width of the stock yards there is a half mile.

Q. 99. Incidentally, this map appears to be blank around the stock yards. As a matter of fact, it is all densely built up, is it not? A. Oh, yes.

Q. 100. All around? A. Densely built up; yes, sir.

Q. 101. Did you tell us, for the record, what the Central Manufacturing District has become, what it is now? *A.* To the north and northwest and adjacent to the yards is what we call the Central Manufacturing District. It was formerly vacant land, there, and we felt it would be a wise proposition to develop that land into a Central Manufacturing District to get tonnage and, consequently, revenue for the Junction Railway. This was developed and carried on for that purpose.

Q. 102. And the shares of the trust are owned by whom? *A.* Accordingly, at the time the Jersey Company had formed a trust that is known as the Central Manufacturing District, and they own the shares of the trust.

Q. 103. Meaning by "they," whom, the Jersey Company? *A.* Yes, Jersey Company.

Q. 104. Did the District develop through the years as a good producer of tonnage? *A.* Oh, yes.

Q. 105. To what extent, Mr. Leonard? *A.* Well, it developed to a very great extent. In fact, to my mind it has always been the reason the New York Central was willing to pay a rental of $2,000,000 a year for the lease of the road, which was made in 1922, was by reason of the tonnage which had been developed in the Central Manufacturing District.

Q. 106. Now, Mr. Leonard, may I ask you when you first came to know Mr. Frederick H. Prince? *A.* In 1914.

Q. 107. Had you ever met him before then? *A.* No.

Q. 108. Who, at that time, when you first knew Mr. Prince, was in charge of operations in Chicago? *A.* Mr. J. A. Sperr.

Q. 109. Who was the president of the Transit Company? *A.* President of the Transit Company at that time.

Q. 110. Was he a man of marked ability? *A.* He was.

Q. 111. How long did he continue to be in charge out

there? A. He was taken ill in 1925 and died in 1926, and he was in charge until practically 1925.

Q. 112. Now, will you tell us in a general way what the relations were between you men in the West in the operating companies and the Maine company in the East, prior to Mr. Sporr's death? A. Well, at that time, practically, Mr. Sporr and I ran the stockyards. We made money; paid it out in dividends; sent reports of what we had been doing to F. H. Prince & Company of Boston.

Q. 113. Would you say that you had a distinctly free hand out there? A. We had a distinctly free hand there.

Q. 114. What personal contact, if any, was there between you men in the West and the officers of the Maine Company in the East, up until Mr. Sporr's death? A. Well, the only contact was through Mr. Sporr.

Q. 115. Would he come East sometimes? A. Oh, frequently.

Q. 116. Did anybody from the Maine Company come west during that earlier period? A. No.

Q. 117. Now, what you say, I suppose, about the relations between the Maine Company and you men in the West would apply to the Transit Company; is that right? A. That is right.

Q. 118. And to the Railway Company? A. And to the Railway Company.

Q. 119. Would it also apply to the Railroad Company? A. And the Railroad Company.

Q. 120. How about the Manufacturing District? A. Well, that was somewhat exceptional because the bonds that had been issued by the Central Manufacturing District were guaranteed by the Jersey Company, and when we sold any property or lease with an option in it to buy, why, we had to send those papers down to New York and obtain a release from under the general mortgage.

Q. 121. Yes. Well, except for that did you have quite a free hand? A. Entirely free hand in the District.

Q. 122. How about Produce Terminal? Did you have, similarly, quite a free hand? A. Oh, absolutely. That was primarily my baby.

Q. 123. Now, was there some change in this situation about the time of Mr. Sporr's death? A. Yes.

Q. 124. What change was there? A. Well, the change was that the Maine Company had come in—the officers of the Maine Company came west quite frequently.

Q. 125. Did somebody go out to the Board out there? A. Sir?

Q. 126. Did somebody go on to the board of directors? A. A Mr. Prince, who was president of the Maine Company, went on as chairman of the board of the Transit Company.

Q. 127. Did representatives of the Maine Company now begin to come West? A. Oh, they came West with increased frequency and gave orders and directions what to do. We might send suggestions to the East, and they might come back in the form of an order.

Q. 128. And they might not? A. And they might not.

Q. 129. Now, take by 1930 to 1933, what was the relationship by that time? A. Well, the Maine Company was practically in the saddle, and I was about the hired man, I guess, you might say, and the orders came from the East and told us what to do and how to do it.

Q. 130. Was there any daily contact between— A. Oh, yes, there was.

Q. 131. Was there any daily contact between you men that were running the Transit Company and Produce Terminal and the District with the officers of the Maine Company? A. There was.

Q. 132. How was that contact? A. Telephonic.

Q. 133. And how often? A. Oh, frequently, many times a day.

Q. 134. Now, could you give me, Mr. Leonard, some examples of things that would be decided or handled by the Maine Company in the years '30 to '33? A. Well, during those years we had the banking crisis in Chicago, and the Transit Company and the various affiliate organizations were badly affected, and the Maine Company, or the easterners, handled the entire situation.

Q. 135. During this period, 1930 to '33, what would be the situation in case of changes in personnel out there in Chicago? A. Well, we would, if there was any of the principal officers, we would submit the names of successors to the East and for their approval.

Q. 136. And were the ultimate appointees chosen by you in the West or by the Maine Company? A. They were chosen by the Maine Company.

Q. 137. How about dividend policies? A. Oh, they were —they were decided by the Maine Company, what to do and what dividends to pay.

Q. 138. Did the Maine Company in those years have anything to say about where your funds were kept? A. Yes.

Q. 139. What did they have to say? A. They indicated the banks in which the funds should be deposited.

Q. 140. Now, you have authority, I take it, to sign checks, Transit Company checks, do you not? A. Oh, yes.

Q. 141. Is it within your power to draw a check for any sum that is in the bank, if you wish to? A. Yes.

Q. 142. Will you tell His Honor as a practical matter how you exercised that power? A. Well, anything that for large sums that the Maine Company are familiar with as we go along in a daily routine, why, we don't consult them for the payment of those—the issuance of those checks,

but any unusual large amount for—we would consult the Maine Company and obtain the authority.

The Member: Wait just a minute. Will you read that answer? (Answer read.)

The Member: You mean that the size of the sum had nothing to do with it; because of these large sums in the first—

The Witness: Oh, no.

The Member: —part of your answer?

The Witness: Oh, no.

The Member: And that large sums in the second part—

The Witness: No, that was routine.

The Member: The distinction was whether it was unusual or not.

The Witness: Unusual, yes.

The Member: Oh.

The Witness: But the daily trend, why, then, we issued them.

The Member: Irrespective of how large the sum might be.

The Witness: Well, we were—

The Member: If it is small or ordinary sum, or ordinary occasion, you would not—

The Witness: Well, we paid one freight bill for one week's freight of $975,000.

Q. 143. (By Mr. Welch). And I take it, as to a freight bill, you would never ask the Maine Company for any authority? A. Oh, no, because that is a matter of routine, as it goes along.

Q. 144. On the other hand, if you had something out of the regular course of business, even in a much smaller sum, if it was out of the regular course of business— A. Oh, yes.

Q. 145. —then what? A. Yes, indeed, then we applied to the Maine—

Mr. Clark: Just a moment. You have been doing a lot of leading here. Please put the questions properly.

Mr. Welch: I did not think I had been doing a lot.

Mr. Clark: Well, it seemed so.

Mr. Welch: If I have sinned, well, I will try to—

Mr. Clark: I do not mean to interrupt too much on this routine examination.

Q. 146. (By Mr. Welch). Did you at some time, some years ago, have a serious fire out there? A. We did.

Q. 147. Will you tell us what the extent of it was, and again I will go to the map and point as to what you say to us. Where did it start? A. It started in the southwest corner of the yards, right down below there.

Q. 148. (Indicating on map.) A. A little further down, right down there.

Q. 149. Somewheres near the letter "C" and cattle pens on this map? A. Well, it is just south of the Armour office there.

Q. 150. O. K. I think we have it. A. Yes, just south of there, it started.

Q. 151. And burned— A. And then it went up northwest.

Q. 152. Northeast? A. And destroyed all the pens—no, further—northeast (indicating).

Q. 153. Northeast (indicating)? A. Northeast. I said west.

Q. 154. Yes. A. And destroyed all of the pens there, destroyed the row of horse barns, the amphitheater, the hotel, and a great many of the other buildings, and then gutted our Exchange Building, our office building.

Q. 155. Incidentally, what kind of a building is your office building? A. It is a concrete building.

Q. 156. How large, how many stories? A. Eight stories.

Mr. Welch: Will you permit me to lead on this?

Q. 157. (By Mr. Welch). A fairly large office building, I take it? A. It is a very large office building.

Q. 158. So, then, pointing again to the map (indicating), the fire began somewheres in this section, in the vicinity of this letter "C,"—you may not be able to see. A. Yes.

Q. 159. And burned straight out in a northeasterly direction? A. Out to Halstead Street, yes, destroyed the bank building.

Q. 160. Did anyone from the Maine Company appear? A. Yes.

Q. 161. When the fire happened? A. Yes, Mr. McDonough came down the second day, and Mr. Prince—or the first day—and Mr. Prince was there the second day.

Q. 162. I think that is the first time we have had Mr. McDonough's name. Who is he, sir? A. He is the vice-president of the Maine Company.

Q. 163. And is assistant to Mr. Prince? A. And assistant to Mr. Prince, yes.

Q. 164. After that fire did problems arise as to what you would be—as to what would be rebuilt? A. They did.

Q. 165. Who dealt with those problems? A. Mr. Prince and I.

Q. 166. Well, what did Mr. Prince do,—what was— A. Well, he indicated that the buildings should be rebuilt, and what we should do in a general sort of a way.

Q. 167. How about carrying out his orders? A. They were carried out, obeyed implicitly. Mr. Prince even suggested that nothing but common bricks should be used in our amphitheater.

Q. 168. Am I correct in thinking that you hoped for something else? A. We did,—ha! ha!

Q. 169. Now, may I ask you whether or not from 1931 on, say through 1933, any suggestions of yours have been turned down by the Maine Company? A. Yes.

Q. 170. Can you give us a sample of suggestions that you have made that have been turned down? A. Well, in 18—in 1935, I suggested that—

Q. 171. In what year, sir? A. 1935—or 1933.

Q. 172. You are about to speak of some hog houses, are you, sir? A. Yes.

Q. 173. And the year, I think, was what? A. 1933.

Q. 174. All right, go ahead. A. Yes, 1933.

I wanted to build hog houses of concrete. I asked for two million, and I was turned down.

Q. 175. Did you, at that time, have any conversation with any representative, anybody in the Maine Company, about these hog houses? A. I did.

Q. 176. With whom did you have such a conversation? A. Mr. Prince.

Q. 177. Where did that take place? A. In Chicago.

Q. 178. On what occasion? A. On the occasion of a visit that he was making there, a trip that he made there.

Q. 179. Now, will you tell His Honor, in substance—

Mr. Welch: Could I interrupt just a moment? I am wondering if there is provision for Counsel to have any water?

The Clerk: Yes, I will take care of it.

Mr. Welch: Your Honor made me think of it.

The Member: Can you go ahead until you get it?

Mr. Welch: Yes; thank you, sir.

Q. 180. (By Mr. Welch). You spoke of having a conversation with Mr. Prince. *A.* Yes, I did.

Q. 181. In respect to these hog houses. *A.* In respect to the hog houses.

Q. 182. Will you tell His Honor the substance of what was said by you, and the substance of what Mr. Prince said to you in response. *A.* Well, I was urging upon Mr. Prince the serious necessity of building fire-proof hog houses, and fire-proof sheep house, and Mr. Prince said: "Well, Mr. Leonard, why, I cannot possibly let you have any such sum of money as that now. I have got a very, very large sum of money to raise to pay off the indebtedness of 1940. I know that you would like to have the hog houses; I am perfectly willing to have you have them, but until after 1940, nothing doing."

Q. 183. Did you at such time have some similar project about some sheep houses? *A.* I did.

Q. 184. Did you also have a discussion with Mr. Prince about those? *A.* I did.

Q. 185. Will you tell us, in substance, what you said then, and what he said? *A.* He practically repeated the same conversation, but emphatically said: "Don't ask me for any money until the indebtedness is paid off in 1940. Come to me after 1940 and I will talk it over with you."

Q. 186. Now, taking the last ten or fifteen years, Mr. Leonard, what would you say has been the policy of the Maine Company with you on the point of maintenance and improvements out there? *A.* I say it has been niggardly.

Q. 187. Have you at any time said anything about that? *A.* I have told Mr. Prince that.

Q. 188. What did he say when you told him that? *A.* He said: "I know you feel that I am skinning all the money from you, and not giving you what you would like to have, but until this indebtedness is paid"—in short, that was the

burden of his song—he must pay this indebtedness in 1940 and—.

Mr. Clark: Just a moment. Is Mr. Prince here?

The Witness: Sir?

Mr. Clark: Is Mr. Prince here?

Mr. Welch: He is not in the courtroom.

Mr. Clark: Is he supposed to testify as to any of this conversation himself?

Mr. Welch: I do not know why I should answer at the moment. That has nothing to do with its admissibility.

The Witness: I am under oath.

Mr. Clark: Well, I won't object.

Q. 189. (By Mr. Welch). On how many occasions, Mr. Leonard, would you say that Mr. Prince has discussed with you his need for funds in 1940? A. Oh, on numerous occasions.

Q. 190. Did he ever tell you anything about the sum that he would need? A. Oh, yes.

Q. 191. What did he tell you about that? A. He said he required 28 millions for 1940.

Q. 192. Now, Mr. Leonard, during the last 10 years or so, what has been the trend of the volume of business in the stock yards? A. Well, we have had a drouth in the west, and it has decreased, to some extent,—decreased all over, but we are particularly suffering from what we call the direct buying, where they avoid the yards.

Q. 193. Well, I think you will have to explain that a little,—how direct buying does avoid the yards, as you put it. A. Well, Swift & Company, for instance, has a small yard down at Halstead Street, and the river—at Halstead Street—they buy direct in the country and ship to the small yard and truck them out to the plant, and avoid the yards.

Q. 194. And avoid the yards entirely? A. And avoid the yards.

Q. 195. And, I take it, that the way the Transit Company makes money is by having stock go through its yards; is that right? A. Yes, sir.

Q. 196. What effect does this practice of Swift & Company have on the farmers who produce live stock? A. Well, I feel eventually it is going to prove disastrous to the farmer that raises and feeds live stocks. The stock yards is doing a marvelous work, I feel, in maintaining a wonderful, free, and competitive market for live stock. It is the largest live stock market in the world. It is a point where the greatest demand that exists anywheres in the whole world for live stock is met by a supply from the country. There is a large number of commission men in the yards that serve the producer with a fidelity that is beyond question. If such a yards is to continue and is served as it is served today, then the farmer will get a fair price for his live stock and they will be well handled and will be weighed by an independent source, but if these yards diminish or disappear, then the farmer is confronted with a very, very serious proposition. The only place he can send his live stock to is the packer and when the packer handles them and the packer weighs them and the packer puts the price on them, then the farmer is lost.

Q. 197. Now, did I understand you to say that Swift & Company has been for some time bringing in these "directs," as you call them? A. They have.

Q. 198. Now, at some time did Armour & Company threaten to do what Swift & Company is doing? A. They did.

Q. 199. When was that? A. In 1932 or 1933.

Q. 200. Did Armour & Company carry out these threats? A. They did not.

Q. 201. Do you know what put a stop to them? A. I do

Q. 202. What was it? A. Mr. Prince bought into Armour & Company and became Chairman of the board.

Q. 203. And then the threat ceased; is that correct? A. Well, they didn't put it into effect.

Q. 204. Then do I gather that Mr. Prince's buying into Armour & Company has had some beneficial effect upon the stock yards? A. Yes, indeed.

Q. 205. How would you say it has? A. Well, Armour & Company today are good for 250,000 a year yardage on directs. Swift & Company are not good for 5,000.

The Member: What does that mean? I don't understand that.

The Witness: Well, directs are purchased in the country and then they are sent into the yards. Swift & Company avoid sending his into the yards by sending them down to this little place at Halstead and the river, and then he uses trucks to bring them into the yards. Armour sends his direct into the yards and pays yardage on them, and that amounted, in 1937, to $250,000.

The Member: Two hundred and fifty thousand dollars?

The Witness: Two hundred and fifty thousand dollars; yes, sir.

The Member: I was only seeking to find out what it meant by Armour & Company being good for 250,000 and Swift & Company being good for only 5,000.

The Witness: Yes.

The Member: I think I understand now.

The Witness: I beg your pardon. I didn't make myself clear.

The Member: You mean by that that Armour & Company do, in fact, bring in $250,000 worth of cattle while Swift & Company bring in only $5,000?

The Witness: Yes, sir.

The Member: Into the stock yards.

The Witness: Into the stock yards; yes, sir.

Mr. Welch: Well, I am not sure. As I understand his testimony, they bring in—

The Member: Don't you tell me about his testimony but go on question him and clear it up as you will.

Q. 206. (By Mr. Welch). Do you mean, Mr. Leonard, that they bring in $250,000 worth of cattle or enough cattle to produce— *A.* That is, enough cattle to produce yardage. That is the yardage that they pay on. We only collect yardage, and they pay yardage.

The Member: Two hundred and fifty thousand dollars yardage charges of yours?

The Witness: Yes, sir.

The Member: Is that what you mean?

The Witness: Yes.

The Member: As against $5,000 paid by Swift & Company to you?

The Witness: Yes, sir.

The Member: In yardage charges?

The witness: Yes, sir. Yes.

Q. 207. (By Mr. Welch). Now, Mr. Leonard, from your experience over the years in the stock yards, can you see any serious demands for money that may be made on the Transit Company in the future? *A.* Well, naturally, where one has such a large enterprise, you can think of many things. For instance, a cloudburst, or take a tornado like went through New England in September last or October last. That gave them a wallop. And the depression, when the bank moratorium was declared, the Transit Company got an awful wallop at that time.

Q. 208. Yes. Were these possible needs for money in the future in your mind as possible needs in the years 1930 to 1933? *A.* Yes.

Q. 209. Now, how about your situation if you had a boom?

How would you be fixed? A. Well, our plant isn't adequate to take care of a very large increased supply. We would have to make pretty heavy expenditures to meet any sort of a boom.

Q. 210. Now, taking the years 1930 to 1933, what resources were available to you to which you could turn if you had to meet any of these needs that you have described to us? A. Oh, the only resource that we have would be the Maine Company.

Q. 211. Have you ever resorted to the Maine Company? A. Yes, we have.

Q. 212. And when was that? A. That was during the moratorium, at the Stock Yards Bank, the various banks around the stock yards were in trouble, and the Stock Yard Company put up all they could. The Transit—the Central Manufacturing District did also, but still we were short some $4,000,000 which the Maine Company put up.

Q. 213. Now, just one other thing, Mr. Leonard. Will you be good enough to tell us what you need out there steadily as ordinary working capital? A. Oh, we require at least $500,000.

Mr. Welch: You may inquire.

Mr. Clark: Just a moment, if you please, Your Honor.

The Member: We will take a five-minute recess. (There was a short recess taken.)

Mr. Clark: I haven't quite finished my conference, Your Honor. I will be through in just a moment. (Pause.)

Cross-Examination.

X-Q. 214. (By Mr. Clark). Mr. Leonard, you have testified that, I think it was in 1934—I may be wrong as to the year—on the second day after a fire, there, Mr. McDonough and Mr. Prince appeared and discussed the matter of rebuilding. A. Mr. McDonough appeared the second day

after the fire and Mr. Prince, I think it was, the following day. Mr. Prince was on the steamer and as soon as he landed he came right out, but we were all in ruins when he was there.

X-Q. 215. Yes, but wasn't that rebuilt on funds of Transit Company? *A.* Wasn't it what?

X-Q. 216. Wasn't the rebuilding done on the funds of the Transit Company? *A.* Well, it wasn't rebuilt. We didn't build the yards entirely as they were before the fire.

X-Q. 217. No, no, but I mean whatever expenditure was made, wasn't it made out of the funds of the Transit Company? *A.* No, it was made out of the funds that we received from the insurance company, whatever we did.

X-Q. 218. Yes. *A.* Yes.

X-Q. 219. Well, that was Transit Company insurance. *A.* Oh, yes, yes; I don't mean to be technical, sir.

X-Q. 220. Neither do I. *A.* I wanted to be precise, that is all.

X-Q. 221. Now, during the years 1930, 1932, and 1933, how much cash did the Transit Company have, do you know? *A.* No, I don't know offhand, no.

X-Q. 222. Now, don't you, as a result of the depression in the stock yards business, have more yard than you need for the present activity of the Transit Company? *A.* No.

X-Q. 223. You don't? *A.* No.

X-Q. 224. You mean you need more yards— *A.* If we would have an increase of business—

X-Q. 225. Well, are your yards filled now with cattle? *A.* Well, it is cattle and hogs and sheep.

X-Q. 226. Well, what I mean is with livestock. *A.* No, the yards are not filled with livestock; no, sir.

X-Q. 227. So you have additional room, at the present time. *A.* Oh, yes, yes, sir.

X-Q. 228. Now, I believe you testified that the Jersey Company paid some expenses when the Elevated, so-called, went into receivership in either 1934 or 1935—I don't know when it was. Can you tell me what those expenses were? A. The South Side Elevated went into a receiver's hands in 1932——

X-Q. 229. Yes. A. —and they paid the Chicago Junction Railroad a rent, and they paid the taxes.

Well they failed to pay that rent and they failed to pay the taxes.

That rent was just about enough to pay the interest on the bonds and the Jersey Company paid the interest on the bonds in the absence of the money from the—

X-Q. 230. Whose bonds were those?

The Member: Wait a minute. Let him finish.

"—of the money from the—"; read the answer. Let us get it straight. (The last answer as partially completed was read.)

Mr. Clark: I beg your pardon.

A. (Continuing) —Elevated Railroad.

X-Q. 231. (By Mr. Clark). Let me ask you one more question, Mr. Leonard, and that is relative to the cash which Transit Company had in 1930, 1932, and 1933, if you recall. A. No, I don't recall the cash we had.

The Member: Now, Mr. Clark, will you ask him as to the years 1933 and earlier as to whether or not he had any vacant stock yards space or facilities. You have asked him as to the present time.

Mr. Clark: Yes. That is what I want to do.

X-Q. 232. (By Mr. Clark). In 1933, 1932, and 1930, did you have any vacant stock yards facilities in the Transit Company? A. Well, that is a difficult question to answer because your live stock comes in and goes out and when

you have ample facilities the commission men spread themselves about, and that might—

The Member: Did you have any excess facilities over and above what you needed to take care of the traffic, at that time?

The Witness: Yes, sir.

The Member: Now, any substantial excess? Was it anything substantially in excess of what you needed?

The Witness: No, I don't think so; no, sir.

The Member: Well, what would you say, that it was approximately what you needed or less than what you needed, or how are we going to get a picture of the relation between the amount that was used and the amount that you had over and above what you needed?

The Witness: May I say this, Your Honor: The secretary at about that time had these hogs coming in and the cattle coming in for slaughter, and the Government had a large area in there that required space that we might use but they wanted it for that purpose, and it was stock yard's purposes, of course, because the live stock came in and there was paid a yardage, but it was held there a number of days instead of coming in today and going out tonight and being vacant the next day.

Mr. Clark: May I ask, if I may interrupt, Your Honor—

The Member: I am through.

X-Q. 233. (By Mr. Clark). What percentage of the space you had available was in use during those years? *A.* As I say, they were spread out. It was all in use. We had a large area that was devoted to feeding cattle; that was under sheds.

X-Q. 234. I am talking about the total amount of space. *A.* I mean the total amount, and I am trying to tell you we don't have that, today.

X-Q. 235. Can't you give us— *A.* The stock yard busi-

ness is not a thousand bales of cotton that lies around but stock comes in and goes out the same day. I have had 120,000 hogs in the stock yards and have only had capacity for 70,000 hogs.

X-Q. 236. So you really could not answer that any more definitely than you have? A. I think not, sir. I honestly would tell you, if I could add it up and make two and two make four.

Mr. Clark: That is all.

The Member: You may stand aside. Do you have anything further?

Mr. Welch: Nothing further.

The Member: Stand aside. (Witness excused).

The Member: Call your next witness, Mr. Welch.

Mr. Welch: Mr. Henkle.

O. T. HENKLE.

called as a witness by and on behalf of the Petitioner, and, having been first duly sworn, was examined and testified as follows:

Direct Examination.

Mr. Welch: Would you mind sliding your chair back a little, Mr. Henkle? Will it move?

The Witness: Yes.

Mr. Welch: So that I will have space here?

I take it, that Your Honor does not mind my being so close to the witness? It happens to be convenient for the papers.

The Member: I would like it better if you would stand over at Counsel table.

Mr. Welch: Well, I—

The Member: If there is going to be any disadvantage by being over there—

Mr. Welch: I have only one serious habit, I like to stand up, and I do not like my papers below me too far.

Mr. Clark: I might say, Your Honor, that I was requested by counsel for the petitioner when Mr. Leonard was testifying to stand closely to him on account of the fact that he is deaf.

The Member: I understood that his hearing is defective, and I—

Mr. Welch: Yes, and I did stand close for the same reason. That is the reason I ask you now if you prefer that I stand elsewhere.

Q. 1. (By Mr. Welch). Your name, I think you have already stated? *A.* O. T. Henkle.

Q. 2. And you were sworn just now? *A.* Yes, sir.

Q. 3. Where do you live, Mr. Henkle? *A.* Chicago.

Q. 4. What address? *A.* 5309 Greenwood Avenue.

Q. 5. What do you do? *A.* I am vice-president and general manager of the Union Stock Yard and Transit Company.

Q. 6. That is the company that operates the yards? *A.* Yes, sir.

Q. 7. Are you a director? *A.* Yes, sir.

Q. 8. What, if any, position do you hold in the Chicago Junction Railway Company? *A.* I am a director in that company.

Q. 9. How about the Railroad Company, the Elevated Line? *A.* I am a director in that company also.

Q. 10. How about Produce Terminal? *A.* I am vice-president and a director of that company.

Q. 11. How about the little Stock Yards, Harness and Saddlery Company? *A.* I am a vice-president and director of that company also.

Q. 12. How about Pau Corporation? *A.* The same, vice-president and director.

Q. 13. Now, go back to the Transit Company and tell us,

if you will, when you first became connected with that company? A. In 1903.

Q. 14. In what capacity, sir? A. As assistant to Mr. Leonard.

Q. 15. What was he at that time? A. He was the general manager.

Q. 16. Prior to your going out there, what had you been, Mr. Henkle? A. I had been in business for myself in Chicago for 3 years.

Q. 17. Where did you conduct your business? A. At the stock yards.

Q. 18. Is that how you came to know the men running the yards? A. Yes, sir.

Q. 19. And was it as the result of that that you became employed? A. Yes, sir.

Q. 20. Now, going to the years 1930 to 1933, Mr. Henkle, what was your position then in the Transit Company? A. I was general manager until 1932, at which time I became vice-president and general manager as well as a director.

Q. 21. Were you a director all during the period 1930 to 1933? A. I didn't get the question.

Q. 22. Were you a director all through the period 1930 to 1933? A. Yes, sir.

Q. 23. Are you today still the vice-president and general manager and director? A. Yes, sir.

Q. 24. And are you the man who, more than any other, shall we say, is in charge of operations? A. Yes, sir; directly under Mr. Leonard and the president.

Q. 25. Mr. Henkle, I would like you to make such use of this map as you will and tell us a little more than we have heard about the stock yards and the rails and how things come in, and if His Honor will permit it, perhaps you may step down to the map. I think you may step down, Mr. Henkle, and tell us a little more than we have heard so far.

The Member: I am sure you have in mind that that map has not been introduced in evidence.

Mr. Welch: I mean to offer it in evidence after this witness has testified, or I will mark it now.

Would you mind marking it now?

Mr. Clark: You are marking it for identification?

Mr. Welch: I thought we would actually put it in evidence.

Mr. Clark: That is what I was wondering, whether you wanted to offer it in evidence.

Mr. Welch: Yes. It is quite a convenience I think to those who want to understand this whole enterprise and to see how closely it is knitted together. That is the theory that I have about it.

The Member: Is there any objection to its being received in evidence?

Mr. Clark: Just a moment, Your Honor. (Pause.)

Mr. Clark: No objection.

The Member: It may be received as Petitioner's Exhibit 3.

Let the record show that during the testimony of the Witness Leonard, the map to which reference was made in the course of his testimony was the map which is now being marked as Petitioner's Exhibit 3, and that that was the only map to which reference was made in that testimony.

(The map so offered and received in evidence was marked "Petitioner's Exhibit 3," and made a part of this record.)

Q. 26. (By Mr. Welch). Go ahead now, if you will, Mr. Henkle, and tell us about the stock yards and the rails, and so forth. A. (Indicating on map): The property of the Union Stock Yards and Transit Company extends for one mile along the west side of Halstead Street, and is bound on the north by Thirty-ninth Street, or Pershing Road, on the south by Forty-seventh Street, and on the west by Ra-

cine Avenue, which is one-half mile west of Halstead Street. And in that section is enclosed about 350 acres, there being a little more than a section, and it is the same property that was acquired in 1865.

Just north of Thirty-ninth Street, and a little more west is the property of the Central Manufacturing District and it has further property west on Pershing Road almost to Western Avenue.

The rails of the Chicago Junction Railway, east to the New York Central lines, extend all through the property as shown by the red lines on the map, through the property of the Transit Company as well as the district through Packingtown and westward to the lake—eastward to the lake.

The live stock at the Union Stock Yards is received in the north end of the yards. The rail live stock is brought in by the engines and crews of the line haul carriers and these crews remain with the trains until they are unloaded. As they come in they are set at one of the ten platforms, that are in the north end of the yards. As soon as they arrive, employees of the Transit Company begin to unload the cars, making note of the chutes, of the number of the chute into which the live stock is driven, and the number of the car from which it is driven.

In the meantime, the conductor of the train takes his way bills to what we call the receiving office, where they are called forth for the information of those present, and a bulletin is made and hung on the wall outside in the office so that all can see whether or not any live stock is consigned to them.

The first train that pulls up to the platform we will say is unloaded into a chute that was expressly designed and patented by Mr. Leonard many years ago, there being two chutes to each car length. The first train is unloaded

into the odd numbered chutes. As soon as it is unloaded, the engine and the crew go around to the other end and remove the empty train. Another train can then be pulled into the same platform and unloaded in the even-numbered chutes. In the meantime the employees of the Transit Company are making delivery of the livestock to such consignees as may be present and ready to receive attention. If not, they place it in other pens to clear the No. 1 chute for the succeeding train. By the time the train being unloaded in the even numbers is finished, we should have the animals all removed from the odd numbers, so that the next train can pull right in and thus make the unloading operation a continuous one.

After the live stock is unloaded, if it is received by the commission man, who is usually the consignee, he removes it to the part of the yards where he is accustomed to showing his live stock, and there he prepares it in such lots as he thinks will be most desirable to the purchasers.

After the commission man sells his live stock, he drives it over the scales, and it is there received by the new purchaser, the title passing as it goes over the scale. If that new purchaser happens to be a packer located here at the yards, the men of the packer come over and gather them up and take them over the over-head viaduct and into the packing houses which are immediately adjoining the yards on the west.

Q. 27. May I interrupt? Am I correct in thinking stock is driven on the hoof from the yards to the packing houses? *A.* Unless it is crippled or dead, yes.

Q. 28. Yes. And over these viaducts you have mentioned? *A.* Yes, sir.

Q. 29. Go ahead, sir. *A.* If the livestock is to be shipped out again it will be taken over to the platforms where customarily the cars of the road they desire to ship over are

set, and the employees of the yard could again load those animals.

I think that pretty well describes the movement of the animals through the yards.

Q. 30. We have some pictures, Mr. Leonard, that I think —or Mr. Henkle—that give us some further idea.

Mr. Welch: Doubtless, there is no objection to marking these, is there?

Mr. Clark: Oh, no, indeed.

Mr. Welch: Photographs? I will have them marked and then ask the witness. (Thereupon some documents were marked by the Clerk.)

Q. 31. (By Mr. Welch). Mr. Henkle, will you make such use of these exhibits as will be helpful to His Honor and to all of us in somewhat further picturing this thing to us, referring to the numbers of the pictures on the back as you may make use of them? Just pick them up and tell us anything they show and correlate it with the map, so far as you can.

The Member: Where are they marked? On the back?

Mr. Welch: They are marked on the back, yes. *A.* No. 5 is an airplane of the yard—

Q. 32. (By Mr. Welch). Turn it so His Honor can see it. *A.* —looking toward the northwest; this being the north end of the yards, as I described a moment ago (indicating) as bordering on Pershing Road.

The map shows the pens in some detail, with the Exchange Building in the center and the hog pens and unloading platforms in the north end of the yards. These platforms may be approached by the railroads coming in from the east or coming in from the west.

Q. 33. Packers plants are where, on the picture, Mr. Henkle? *A.* The plants of the packers are grouped along the west side of the yards and there is one large plant at the

south and a number of smaller plants north of the yards and two or three just northeast of the yards, but as a general thing they are very closely surrounding the yards, so that the animals can be driven on foot to any of these surrounding packing houses.

Mr. Welch: Mr. Clark, if you would like to come over here, so that you can understand?

Mr. Clark: I will look at it later.

Mr. Welch: We have had the pleasure of looking at the yards together, so you know what they are.

Mr. Clark: Yes.

Q. 34. (By Mr. Welch). Is there anything about the other pictures you want the record to show?

The Member: I want the record to show whether this is a correct representation of the yards as they were during the tax year in question.

Q. 35. (By Mr. Welch). How will they do as a picture of the yards in 1930 and 1933, Mr. Henkle? *A.* There are some portions of it that were destroyed in the fire of May 19, 1934.

Q. 36. I am talking only, however, about 1930 to 1933. Is it a fair representation of the yards in those years?

Well, I follow you: This was taken after the fire, then? *A.* Yes, sir.

Q. 37. Then what difference would there be between the picture you are now using and the condition as it existed during the years 1930 to 1933? *A.* The only difference that exists is that there are a few spots on this map—

Q. 38. Or picture— *A.* —on this picture, No. 5, that were there in 1933 and were not there when this picture was taken.

Q. 39. And by "spots," do you mean spots covered by pens in 1923? *A.* The spots that are now bare were covered

by pens in 1933, especially one small spot at the bottom of the yards.

Mr. Clark: I would ask you to point out, definitely, just what, in parts, were not there at that time.

Q. 40. (By Mr. Welch). Can you do that for us?

Mr. Welch: It is not in too clear detail, Mr. Clark. A. All parts that are here were there in 1933 but there were some more parts in 1933 than there are in this picture.

Mr. Clark: Can you indicate what those are?

The Witness: At the south end of the yards—

Mr. Clark: This will have to be in some way indicated for the record.

The Member: He has already testified as to the fact that this shows the yards so far as they are south of Pershing Road and Thirty-ninth Street, so that that indicates where the South Side is. The south side is the lower part of the picture, isn't it, Mr. Henkle?

The Witness: Yes, Your Honor.

The Member: So when you say "south side of the yards" you mean the lower end of the yard is shown on the picture, do you not?

The Witness: Yes, sir. There is a spot near the center of the picture at the south end of the cattle pens and adjoining what would be Forty-fifth Street extended across the yards where there is a bare spot shown in this picture that was covered with pens during the years 1930 and 1933.

There is another spot that shows in this picture as a parking space just south of the Exchange Building, which is in the middle of the yard. That, in 1930 and 1933, was covered with pens.

On the east side of the yards where now is shown automobiles parked, near the amphitheater, there were horse barns. Those are the only spots on the picture that are different from what they were in 1930 and 1932 and 1933,

there being much more facilities there then than there are now.

The Member: Now go to the other pictures and go over those as rapidly as you can.

The Witness: Picture No. 7 shows the Exchange Building which is in the center of the yards. The view is towards the north and show the general type of the cattle pens and the animals as they stand in the pens.

Q. 41. (By Mr. Welch). How about the elevated railroad structure? A. The elevated railroad structure is shown, together with the Exchange station. I think, Mr. Welch, I was wrong in stating the direction that this picture was taken.

Q. 42. I thought you were. A. It is taken to the south.

Q. 43. Looking south. A. Looking south.

The Member: Oh; that is looking south.

The Witness: They were standing at the north end looking south, in this picture.

The Member: The top side of the picture is the south side and the bottom is the north?

The Witness: Yes, sir.

The Member: The north side would be upside down.

The Witness: Yes, sir.

The Member: And what about the relation between that picture and the situation as it existed in 1933 to 1930?

The Witness: Everything in this picture was the same in 1930, 1932, and 1933 as it now shows.

The Member: All right. Take the next one.

A. No. 6 is a view looking to the west.

The Member: So that the bottom of the picture is the east side?

The Witness: That is correct, sir.

A. (Continuing) It shows the large Exchange Building, the east end of it, in the center of the picture.

It shows some of the Armour packing houses with the signs thereon.

It shows the Armour office building there are no signs on the building, and still other Armour buildings with signs on them, just south.

The line of freight cars in the foreground are set there to be ready to be loaded with stock, to the east.

Q. 44. (By. Mr. Welch). And by "stock to the east" you mean stock that may be shipped out to the East? *A.* Yes, sir.

Q. 45. I think that will be enough for that, Mr. Henkle.

The Member: Does that show the way it was in 1932 and 1933?

The Witness: No. The viaduct in the foreground is a concrete viaduct and the viaduct in 1930, 1932, and 1933 was a wooden viaduct.

The Member: Otherwise everything is the same?

The Witness: That would apply to all the viaducts that show here in the picture.

The pens, themselves, between these viaducts have been removed just at this spot but they were covered with pens of the same character during the period of 1930, 1932, and 1933.

Q. 46. (By Mr. Welch). Take picture No. 4. *A.* This is No. 4.

This is a view looking towards the west.

The top of the picture is the west, this time, and shows the top of the 46 double-decked hog houses at the north end of the yards, and also shows all platforms from 1 to 10 where livestock is unloaded and loaded out.

The Member: Could you step over a little closer to it?

The Witness: That's 6.

The Member: No. 6. You said looked towards the west, did you not?

The Witness: Yes, sir; but this one—

The Member: No. 4 looks in the same direction that 6 looks?

The Witness: From a point farther north, everything that shows in this picture (indicating).

Q. 47. (By Mr. Welch). No. 4? *A.* No. 4 is the same now as it was in 1930, 1932, and 1933.

Mr. Welch. That, I think, will serve us, Mr. Henkle, on pictures and map, and you can go back to the stand, if you will.

Q. 48. (By Mr. Welch). Do all the animals that come into the yards go over to the packing houses for slaughter? *A.* No, sir.

Q. 49. What happens to those who do not,—the animals that do not go over for slaughter? *A.* Well, some of them are shipped out to slaughter houses outside of the yards, or they may be shipped back to the country to be fed and further fattened.

Q. 50. How about,—what percentage of animals coming in go to immediate slaughter, and what percentage is shipped out? *A.* Well, of course, it varies from time to time, but I should say the average would be from 70 to 75 percent is slaughtered in and around the yards, and 20 to 25 percent—or 25 or 30 percent would go out again alive.

Q. 51. Is the flow of livestock into the yards steady, day by day, or does it vary throughout the week? *A.* It varies throughout the week, and very unevenly.

Q. 52. What is apt to be your heaviest day, or days? *A.* Well, usually, Monday is the heaviest day, the animals arriving during the night on Sunday to be ready for the market on Monday morning.

Q. 53. What is the biggest number of cars you have ever unloaded in a single day? *A.* I have been asked that so many times that I can reply readily,—it is 3,228.

Q. 54. And in what year was that? A. That was in 1904.

Q. 55. And what is the biggest number of cattle ever unloaded in a single day? A. 49,000.

Q. 56. Do you remember that year? A. 1908.

Q. 57. The biggest day of sheep? A. 71,000.

Q. 58. And in what year? A. About 1911, I think.

Q. 59. What is your record on hogs? A. 122,000 in one day.

The Member: You are talking about head, are you not?

The Witness: Yes, sir; yes.

Q. 60. (By Mr. Welch). All told— A. Except that the first answer was of cars.

The Member: That is the reason I am asking. The first answer was as to cars, and the next three as to head of live stock.

The Witness: Yes.

The Member: Is that right?

The Witness: Yes, Your Honor.

Q. 61. (By Mr. Welch). Now, refreshing your recollection, if need be, from any figures that you need, will you take the years 1930 to 1933 and tell us approximately how many animals were unloaded at the stock yards in each of those years.

Mr. Welch: This if Your Honor please, is animals of all kinds.

A. In 1930 we had 15,019,000; in 1931, 15,281,000; in 1932, 12,991,000; in 1933, 13,850,000.

Q. 62. That is far enough.

Now, of those years 1932 is the lowest; is that right? A. Yes, sir.

Q. 63. Twelve million, nine plus? A. That is correct.

Q. 64. How does that figure compare to previous years, Mr. Henkle? A. I don't find anything as small as that way back to 1897. Shall I look back farther than that?

Q. 65. No, I think that is far enough. A. To 1897.

Q. 66. How about the year 1933 as compared to earlier years? A. Well, that was the second—that is the second lowest for 50 years, I would say.

Q. 67. May I ask you just generally what has been the trend since 1933, upward or downward? A. It has been downward.

Q. 68. May I ask you what you anticipated in 1933, say, as to the probable trend of animals through the yards in the future? A. Well, I was of the opinion then that the trend would be downward.

Q. 69. Now, Mr. Henkle, you have told us about the way animals come into the yard, and I want you to now tell us, if you will, about sources of income. When a car is pulled in and unloaded, is that the time when the Transit Company begins to make money or earn money? A. The first earnings arises from the unloading charge of a dollar and a quarter for each single deck and a dollar and a half for each double deck car that is set at the platform.

Q. 70. That is an unloading charge? A. Yes, sir; and is paid by the railroads.

Q. 71. Then as the animals move into the yard, is there a yardage charge? A. Yes, sir; there is a charge per head for each animal that is unloaded on our property or in the yards.

Q. 72. And taking the years '32, '33, what was the charge per animal on the various kinds? A. By rail, the animals, the cattle, each head pays 45 cents yardage; each calf, 35 cents; each hog, 15 cents, and each sheep, 10 cents, and each horse 50 cents.

Q. 73. Now, when the animals reach the yards, may you get some more revenue by virtue of the fact that the animals are there? A. Yes. If the owner of the cattle has authorized his representative to feed the animals, we may

get further revenue from the feed that is ordered for the owner of the cattle.

Q. 74. Bedding? *A.* Yes, they may order bedding also.

Q. 75. Now, if an animal comes into the yard and is unloaded, and, let's say, is fed and watered and bedded, if you please, and then he goes over the ramps to the slaughter houses, is that the end of your income in the Transit Company from that animal? *A.* Yes, sir; the income that I have specified would cover those animals.

Q. 76. Now, is that the route that all the animals take, or not? *A.* No. I have said that some of them may be shipped out, and also there may be some of them that may be sold to a trader in the yards who assembles them, the various types and sizes of animals into even lots and sells them again. If he does that, when he sells them, we have a re-weighing charge on those animals, and if they are—

The Member: Re-weigh? Is that what you said?

The Witness: Your Honor, a re-weigh charge is a charge for weighing an animal the second or successive times. He gets one weigh in the charges that I previously mentioned, but if the—if in the trading he sorts his animals so that he doesn't know the weight of the parts that he is selling, then they must be re-weighed and there is a charge again for that.

Q. 77. (By Mr. Welch). Then may the animals be loaded again on freight cars, Mr. Henkle? *A.* Yes, sir; in which event we get from the railroads an additional dollar and a quarter for each single-deck car and a dollar and a half for each double-deck car.

Q. 78. You told us, Mr. Henkle, that you had a downward trend through the years '30 to '33. Would you take a moment to tell us the reasons for that downward trend? *A.* Well, there are various reasons for that downward trend. Our receipts in a general way are very much af-

fected by the crops either in our own direct territory or in other territories. If we have the drouth from which our animals come, that affects us very seriously in cutting down the number of animals that we receive at the moment. Also in recent years packing houses have sprung up throughout the center of Iowa and South Minnesota that purchase and slaughter a great many of the animals nearby where they are raised.

Furthermore, our receipts at the yards are cut down if the packers located at our yards go to points through the producing territory, buy their livestock there, and ship it into their plants without coming through our yards. So that all *of those factors affect our receipts.*

Q. 79. And I take it that shrinkage in receipts naturally means shrinkage in revenues? *A.* Certainly, because our revenue depends upon the numbers that we receive.

The Member: Well, now, may I point out this specifically? Are the reasons that you have given all actual reasons for the actual downward trend in the years up to 1933, beginning in 1930?

The Witness: No, Your Honor. There are conditions of trade that affect us and the conditions of demand in the East, and supplies in our territory. There is a great variety of causes that may affect our receipts.

The Member: You were asked to state what were the reasons for the downward trend in those particular years. You haven't answered that question yet unless you are willing to say that all of the reasons you have given generally are applicable to those years.

The Witness: I am willing to say that, Your Honor.

Q. 80. (By Mr. Welch). Now, was there any other factor, Mr. Henkle, beside the shrinkage in the number of animals going through the yards that affected revenue of the yards in the years 1930 to 1933? *A.* Well, I might go back

to the period of 1921, when the packers and stock yards act was passed, and we came under the administration of that Act, the regulation of that Act. Our charges were from that time forward subject to regulation by the Secretary of Agriculture.

Q. 81. Did you say, Mr. Henkle, when that Act went into effect? *A.* I think it was January 1, 1921.

Q. 82. Did its going into effect result in any actual reduction of your rates between the years 1921 to 1933? *A.* No, not in an actual reduction of the rates, but since that time our increasing costs not only for materials and supplies but for labor, which is our greatest item of expense throughout the course of years, has greatly increased. When I came there it was—we paid 17½ cents an hour for common labor, and now it is more than three times that much.

As these expenses increased, it became increasingly difficult to maintain a sufficient margin between our expenses and the amounts that were allowed us by the Secretary of Agriculture to keep up our revenue.

Q. 83. Is this regulation by the Secretary of Agriculture all the regulation from outside bodies to which you were subjected? *A.* No, sir.

Q. 84. What other outside bodies regulate you? *A.* The Interstate Commerce Commission. We are under their jurisdiction and regulation in connection with the loading and unloading of livestock of which I spoke a few minutes ago.

Q. 85. And are the rates for loading and unloading fixed by the Interstate Commerce Commission? *A.* Yes, sir.

Q. 86. May I ask you whether or not the rate that you have is in your opinion adequate? *A.* In my opinion it is not adequate. It only about covers the actual first cost of the labor.

Mr. Welch: If Your Honor please, I am now at a point where I wish to go into some figures in the stipulation. Other things being equal, I would prefer to start that in the morning.

Mr. Green: We go to 4:30.

Mr. Welch: I know, but we are very close to it.

The Member: We wasted 15 minutes at the luncheon hour. I would rather go on. These delays accumulate.

Mr. Welch: All right.

Q. 87. (By Mr. Welch). Directing your attention to S-3, attached to the stipulation which is headed "Transit Company, Net Income, Dividends Paid, and other data,"—I notice that of the net income of the Transit Company other than that received by way of rent from the Railway Company, the income in 1930 was $1,092,470.65.

Mr. Welch: Your Honor, would you appreciate my waiting a moment until you find it?

The Member: No, I can go ahead.

Mr. Welch: Good.

Q. 88. (By Mr. Welch). And for the year 1931, it is $831,750.69; for 1932, $2,549,549.30, and for the year 1933 a loss of $1,669,874.15.

There is, I notice, a great difference between the last two years that I have mentioned than the first two years.

A. Yes, sir.

Q. 89. Can you explain that difference, Mr. Henkle? *A.* Well, the year 1930—the year 1930 looks fairly normal. 1931 is not quite as good as it ought to be. In 1932 where it shows a profit of $2,549,549.30, we had an unusual and non-recurrent item there which I will describe as a re-weigh fund, which we took into our earnings in that year.

In 1921, 1922, or 1923,—I guess it was in 1921,—we had filed a tariff with the Secretary of Agriculture which contained a re-weigh charge. That was brought before the

Secretary of Agriculture, and a hearing was held which extended over a long period, during which time all of the re-weigh charges were impounded in a bank awaiting the decision of the Secretary of Agriculture.

That decision was not reached in such a form that we could take it into our accounts until 1932, and in that year the re-weigh charges had amounted to something like $2,400,000, which, after deducting the income tax, made an item of $2,000,000 to be taken into our earnings at that time, which came from perhaps—well, almost 10 previous years.

Q. 90. All right.

Then, there is a non-recurrent swelling of something like $2,000,000 in the 1932 figures; is that correct? *A.* That is correct.

Q. 91. And, to that extent, it is not a typical year's operation; is that it? *A.* That is correct.

Q. 92. Now, how about the next year, when you show a loss, and a serious one; is that an unusual situation, Mr. Henkle? *A.* In 1933 was the year of great distress when all the banks were closed, early in the year, and many of our securities and bonds and things of that sort, so far as depreciation in value, depreciated so far that there was a loss that year and a reduction in our assets of about $2,200,000, I think; something like that, and—

Q. 93. That, then, is it fair to say was an unusual year on the down side, because of those losses? *A.* That is correct.

Q. 94. Disregarding the unusual features, one on the up side and one on the down side, during those years, what was the trend of the revenues, net income of the transit company, during the year 1933? *A.* It was downward, without those items.

The Member: Excuse me, Mr. Henkle. I don't under-

stand this 1933 figure of a million some odd thousand deficit.

The Witness: Six hundred sixty-nine.

The Member: A million six hundred sixty-nine thousand?

The Witness: Yes, Your Honor.

The Member: Do I correctly understand you to say that that is substantially attributable to a drop in the market value of securities which you held?

The Witness: We had various stocks and bonds which, during the bank panic, decreased in value $2,200,000.

The Member: Would that be reflected in a deficit in your income?

The Witness: Yes; we didn't make nearly that much and it had to be charged to profit and loss during those years.

Q. 95. (By Mr. Welch). Were those securities charged off or sold in those years so that the losses were actually taken? A. They were charged and the losses actually taken. The securities were not sold because we weren't able to sell them.

The Member: They weren't operating items, were they?

The Witness: No, sir.

The Member: Everything you have talked about so far, with regard to 1930, 1931, and 1932, relating entirely to operating items, as I understood it.

The Witness: Yes, Your Honor.

The Member: Even including the impounded funds of previous years which emerged in 1932.

They were operating re-weighing charges, weren't they?

The Witness: Yes, sir.

The Member: Am I to understand, then, that the deficit of 1933 was unusual in that it reflected a non-operating item of a type that was different from the items which were included in the preceding 3 years?

The Witness: That is correct.

The Member: Now, can you eliminate the non-operating factor and deal alone with the comparison of the 1933 figure, without the non-operating item, compare that with the operating item of the previous years, so that they will be comparable?

The Witness: Well, I think, Your Honor, that a little further along in the testimony we come to the details of those items and the description of how that came about.

The Member: All right.

Q. 96. (By Mr. Welch). Mr. Henkle, without meaning to tie you at all to actual dollars and cents, can you approximate for His Honor the actual operating income for the whole 3 years so that he can have it, at least roughly, and see the trend of it? *A.* For 1931 we have already mentioned the net earnings there, of $831,750.69.

In 1932 there is the non-recurring item amounting to about $2,000,000. Without that item the earnings would have been $549,549, in that year.

The Member: Is that a fair representation of your operating income that year, $550,000?

The Witness: Yes, sir.

Q. 97. (By Mr. Welch). And in the next year? *A.* And in the next year the loss of $1,669,000, if we deduct that from $2,200,000 we have something a little less than $700,000 of the operating profit for that year.

The Member: That is a plus item, is it?

The Witness: That would be a plus item.

The Member: So that your deficit of a million some odd for 1933 would, instead, appear to be a profit—that is, an earnings item in excess of the earnings of the preceding year of $550,000; is that correct?

The Witness: Yes, sir. It would be a couple hundred dollars—

The Member: So that your trend would have been down and then up again, in 1933, wouldn't it?

The Witness: Yes, a little up in 1933 but not nearly so high as 1931.

Q. 98. (By Mr. Welch). Now, Mr. Henkle, I want to call your attention to something that appears in this picture, so I think it can be identified.

Can you point out to me and to His Honor something called the amphitheater?

Mr. Clark: Which numbered exhibit is that?

Mr. Welch: I thank you for that. It is in Exhibit 5.

A. The amphitheater is on Halstead Street, right here (indicating) and about a thousand feet from the north line of the property.

Mr. Welch: I am going to mark it, then—

A. (Continuing) It is on the west side of Halstead Street, not quite half way down the property.

Mr. Welch: I am going to mark it—will you mark it, if we can, on the exhibit, the letter "A," say, for "Amphitheater." I hope it will show. (The witness does as requested.)

Q. 99. (By Mr. Welch). Now, the building you have marked with an "A" on Exhibit 5, then, is the so called International Amphitheater, is that correct? *A.* Yes, sir.

Q. 100. By whom is it owned? *A.* The Transit Company.

Q. 101. About what is the size of that building? *A.* It is about 522 feet long, north and south; about 311 feet wide, east and west. It is two stories, in its entirety, and a portion of it, there is a gallery or corridor around it, making three stories, and there is approximately seven acres of floor space in this one building.

The Member: Is that where the stock show is shown every year?

The Witness: Yes, Your Honor.

Q. 102. (By Mr. Welch). Have you two pictures in the courtroom that show it, Mr. Henkle; meaning by "it," the amphitheater?

Mr. Welch: That has not yet been marked. I think I will offer them, if you don't object, Mr. Clark, so that he can talk about them.

Mr. Clark: That is all right.

Mr. Welch: If Your Honor will excuse me, we will have them marked.

Mr. Clark: When was that taken?

Mr. Welch: This is the present amphitheater, is it not? Mr. Henkle?

The Witness. Yes, sir.

Mr. Welch: Built after the fire?

The Witness. Yes, sir.

Mr. Clark: What does that mean; in what year?

The Witness: This picture might have been taken in 1934, 1935, 1936, 1937 because we give the same parade and have the same crowds every year, at the same hour.

The Member: It was taken after the fire in 1934, was it?

The Witness: Yes, Your Honor.

Mr. Clark: And how about this other one?

The Member: Wait just a moment now.

When you say "this one," that was taken after the fire of 1934, are you referring to the one which the Clerk is now marking as Exhibit No. what?

The Clerk: Nine.

The Member: No. 9; is that correct?

The Witness: Yes, sir.

The Member: Now, then, you have in your hand Exhibit what?

The Witness: This is No. 8.

The Member: All right. Now talk about that.

The Witness: Exhibit No. 8 is a photograph of the amphitheater looking towards the southeast. On the west of the amphitheater are parked hundreds of cars brought there by the attendants of the exposition.

The building at the north is the west elevation of the Stock Yard Inn.

The Member: Does that represent the situation as it was before or after 1933?

The Witness: After.

The Member: After the fire?

The Witness: Yes, Sir.

Mr. Welch: You

Mr. Clark: Well, I do not think that they are relevant exhibits, Your Honor. I hurriedly said that I would not object, and

The Member: Well, if they are good for anything at all they are certainly not good for that, that is true.

Mr. Welch: I do not particularly care.

Mr. Clark: Well, I want to

Mr. Welch: I want to talk about the history.

Mr. Clark: I am not going to object. I will let them go in for whatever they may be worth, but I just wondered what your purpose was.

Mr. Welch: I mean to show by the witness now that the previous amphitheater existed there of which we have no pictures, and I just want to show what went on in the old one. I do not think it would hurt the case. I am with you in saying, Mr. Clark, that we don't know after 1933, and I am willing to strike them out of evidence if it seems to you to make any difference.

Mr. Clark: No, I do not object.

The Member: We will spend now until 10 o'clock tomorrow morning.

(Whereupon, at 4:30 o'clock p. m., January 30, 1939, the hearing was adjourned.)

[Title omitted.]

SECOND DAY.

REPORTER'S MINUTES.

[Filed February 1, 1939.]

Hearing at Washington, D. C., on the 31st day of January, 1939, at 10 o'clock a. m.

The hearing in the above-entitled proceeding was resumed on this the 31st day of January, 1939, before the HONORABLE JOHN M. STERNHAGEN, Member of the United States Board of Tax Appeals, pursuant to adjournment heretofore taken.

Appearances: (Same as heretofore noted.)

PROCEEDINGS.

The Member: Go ahead, gentlemen.

Mr. Welch: If Your Honor please, before we start I would like to say a word about witnesses.

I have the feeling that this case is going to go a good deal more rapidly than I had supposed. At the end of the Petitioner's direct evidence there will be some expert testimony. I learned last night that one of the Petitioner's experts, who is an active, busy man in New York, cannot reach Washington until Wednesday afternoon, probably not in time to testify. It might be we will finish all the case except the expert testimony some time Wednesday, and in that event, if not too much time will be wasted, I might ask Your Honor's indulgence in not starting the expert testimony until Thursday morning. I hope I will not have to. It is not likely I will have to, but I thought I would mention it at this time.

Mr. Henkle, will you go back to the stand?

O. T. HENKLE

having heretofore been first duly sworn was recalled to the stand, and was examined and testified as follows:

Direct Examination (Continued)

Q. 103. (By Mr. Welch). Mr. Henkle, when we closed last night we were talking about Exhibits 8 and 9, Exhibit 8 being the exterior of the present amphitheater and Exhibit 9 being the interior of the present amphitheater. Was there an amphitheater on that same site before the fire of which we have spoken here from time to time? A. Yes, sir.

Q. 104. How long had the previous building been there? A. Well, there had been a building similar to this on that same site for twenty or twenty-five years.

Q. 105. What went on from year to year in that building? A. It was designed for holding the International Live Stock Exposition.

Q. 106. What is that exposition, Mr. Henkle? A. About 40 years ago a number of men that were interested in the live stock industry of the United States and Canada got together and formed an association for the purpose of holding an annual live stock show. They have done so for the past 39 years.

At that show there are exhibits from the best herds in the United States and Canada; all kinds of live stock.

Those who were most interested, the agricultural colleges and the most prominent of the live stock men, endeavored to establish the best types of live stock of all species and they also have educational features endeavoring to improve the breeds of live stock so that they may be raised more economically and be more valuable after they are finished.

The primary idea was for the advancement of the entire live stock industry so that those engaged in that indus-

try on which our business depends might be more prosperous and then we would have an opportunity to share in their prosperity.

The Member: Mr. Welch, can I interrupt this long enough to have you, as briefly as you can, expound to me the theory on which all of this history is put into the case, in view of the fact that your adversary has stated in open court that there is no contention now which the Petitioner needs to overcome that it was formed for the purpose upon which the testimony is based so that it is only a question of whether it is availed of; as I understand it, it is only a question of whether it is availed of in the taxable years 1930 to 1933. For that purpose I have difficulty in being able to find a place in that theory for the history of the Chicago Stock Yards Exposition Hall and these other facts that go back as far as 1865. I have been trying to do that ever since this case began. Perhaps you can simplify my obtuse mind on that.

Mr. Welch: I hope I can be of some help to Your Honor. I take it it is still in issue in this case as to whether or not the Maine Company is a mere holding company. It is, I believe, a part of my job to show that the Maine Company, as I said in my opening, dominates and directs and manages this whole enterprise. It is for that reason that I show what the enterprise is and then, from time to time from these witnesses, show when the domination of the Maine Company began and when it existed and that it existed in the years 1930 to 1933.

The Member: That is to say, you are giving the narrative history of this enterprise for the purpose of giving such a character to this Petitioner as will overcome any possible indication that it is a mere holding or investment company?

Mr. Welch: That is true, Your Honor.

The Member: Of course it is conceivable that irrespective

of its history that during the taxable years nevertheless it was a mere holding or investment company, isn't it?

Mr. Welch: That is true, but I conceive it, as I said, part of my duty to show by the witnesses the management of the Maine Company and the domination by that company in its activities.

The Member: I suppose as long as the Government insists upon making a blanket determination like this you have to meet every possible conceivable way in which it might be supported.

Mr. Welch: That is precisely correct.

Q. 107. (By Mr. Welch). You said something in your testimony, Mr. Henkle, about the purpose to improve the breed of live stock through the company. *A.* Yes, sir.

Q. 108. Has this exposition that has been run out there had any effect upon changing the character of live stock produced in the country? *A.* Indeed it has.

Q. 109. Have you some way, Mr. Henkle, in which you could show to us what change has taken place, and I show you this booklet in the hope it will be of some help.

If you are going to speak from that I will offer it in evidence, and I will tell you what I have in mind.

Mr. Welch: I wish to offer just a single page, showing how the character of live stock has changed.

Mr. Clark: I would have no objection.

Mr. Welch: I think I would like to just tear the page out.

Do you mind, sir (addressing the Member)?

The Member: No.

(The page so offered and received in evidence was marked "Petitioner's Exhibit 10," and made a part of this record.)

Will you state or have the witness state of record just what this page is?

Mr. Welch: I shall.

Q. 110. (By Mr. Welch). Will you look at the page before you and tell us the exhibit number of it, Mr. Henkle? *A.* Exhibit No. 10.

Q. 111. Of what assistance is that exhibit to you in telling us the effect that the International Live Stock Show has had on the breed of cattle in the country? *A.* The final object of the cattle breeder is to raise a steer that is of the most value when it is ready to sell, and that has been developed at the smallest cost. This picture shows three steers, one of the present day, one of about thirty-five or forty years ago, when the exposition started, and one prior to that time, when we started.

Q. 112. May I suggest that you hand it to His Honor? It is a small picture. (The exhibit was handed to the Member.) *A.* (Continuing) When the exposition started, the champion steer that year was a large animal almost 3½ years old and weighed about 1800 pounds. He had been fed for 3 years and paid taxes for 3 years. After about 40 years, we have got it down where the steer is now produced in about a year and a half and pays taxes once and eats less feed than before. That is quite an accomplishment for the entire cattle industry to learn through the types that we have shown and through the lessons that have been given in producing this smaller steer and producing it quickly and a better supply—a better type of meat in a less expensive way, and, of course, to him more profitable.

Q. 113. Mr. Henkle, will you tell us—

The Member: This is just the opposite of the "bigger and better" philosophy.

Mr. Welch: Apparently so, Your Honor.

The Witness: Quite so.

Q. 114. (By Mr. Welch). Mr. Henkle, I would now like to ask you what, if anything, the Maine Company, the tax-

payer in this case, has had to do with this exposition? A. Well, we wouldn't have been able to hold it since 1934 if the Maine Company had not given us permission and authority to reproduce the buildings that were burned.

Q. 115. Has Mr. Prince, the president of the Maine Company, to your knowledge taken an active interest in the show? A. He took a very active interest and decided that this building should be replaced.

Q. 116. I think you have testified, Mr. Henkle, that you were a vice-president and director of the Pau Corporation; is that right? A. Yes, sir.

Q. 117. Have you been since that corporation was formed? A. Yes, sir.

Q. 118. Who has been in charge of the operations of that little company? A. Mr. Leonard and myself under him directly.

Q. 119. It appears from the stipulation in this case, Mr. Henkle, that the company was formed on October 29, in 1931. Did it do any business in that year? A. No, I think the accounts are started the first of the year, 1932.

Q. 120. What was the purpose of the formation of this Pau Corporation? A. For a great many years the Transit Company had manufactured its own electricity for light and power, and as the years went along it became more importanf. We furnished first our own power and light, and then some for our neighbors, and along about 1916 we had extended to such magnitude that the Illinois Commerce Commission ordered us to incorporate the business so that it might come under their regulations in the regular way. That was done. And the distribution lines of the Produce Terminal Corporation extended through the district and to the Packingtown and all over our own property and to other points, and it was found desirable that the easement —an easement covering all of these properties should be

in one corporation for the good of all of them, so that in any changes of properties that the thought might be given to the interests of the others, and that nothing might be overlooked that would be to the detriment of someone of the companies. The Pau Company was therefore organized to take over the easements over all of these properties.

Q. 121. After it was organized did it receive an easement from the Transit Company? *A.* It did.

Q. 122. What kind of an easement was that? *A.* That was an exclusive easement covering all of the properties of the Transit Company and extended as well along the lines of the railroad which was owned by the Transit Company and leased to the New York Central Lines.

Q. 123. Now, let me ask you about the right-of-way over which the Chicago Junction Railway runs. Who owns that right-of-way? *A.* The Transit Company.

Q. 124. Did these easements that you speak of extend throughout the Transit Company land? *A.* It did.

Q. 125 Did the Pau Corporation receive some easements from the Central Manufacturing District? *A.* It did.

Q. 126. What easements did it receive from the district? *A.* It received an exclusive easement over all of the properties of the district.

Q. 127. After the Pau Corporation received the easements did it do something about an agreement to the Produce Terminal—with the Produce Terminal as to the use of them? *A.* It did.

Q. 128. What easement was that? *A.* Well, the Pau Corporation granted to the Produce Corporation a non-exclusive agreement to enable it to reach through the ducts and power lines—or ducts and conduits of the Pau, all of the properties which the Produce is now serving.

Q. 129. Now, Mr. Henkle, I would like to turn particularly

to the Produce Terminal. You are an officer of that company? A. I am its vice-president and a director.

Q. 130. And have been how long? A. Since its inception.

Q. 131. Are you active in the management of that concern? A. Yes, sir; under Mr. Leonard, the president.

Q. 132. I think you have already told us how its business has grown. A. Yes, sir.

Q. 133. And I won't cover that again.

What has been the cause of the expansion of its business, Mr. Henkle? A. Well, increased demand for the tenants and businesses which it has been serving for many years, and also new customers when they come into the district, if is necessary for them to have current, so that there has been a steady growth of the volume of electricity required.

Q. 134. Taking the years 1930 to '33, were you looking forward to further growth of the Produce Terminal business? A. Yes, sir.

Q. 135. Take 1933 as a sample. What resources did you have available for use in increasing your equipment? A. Well, the Produce had not considerable funds to make any considerable increase in the size of its equipment or its distribution lines.

Q. 136. Was there any place to which you could turn for financing as you needed to expand? A. Well, we turned to the Maine Company.

Q. 137. Have you had occasion to do that in the past? A. Yes, sir.

Q. 138. Now, what part, if any, does the Maine Company play in the management of Produce Terminal, taking the years '30 to '33? A. Well, the Maine Company was constantly in touch with the affairs of the Produce Terminal, and if we wanted any additions to the power house or the distribution lines, they were discussed with the Maine Com-

pany, and if they were authorized by them, then we could go ahead and enlarge our facilities.

Q. 139. Does the Produce Terminal make any reports of any kind to the Maine Company? *A.* Yes, sir.

Q. 140. What kind of reports and how often? *A.* They make a complete operating report every month.

Q. 141. I show you this book and ask you if it contains copies of reports made by Produce Terminal from time to time to the Maine Company? *A.* This is a summary of operations for the month of December, 1933, containing 16 pages all relating to details of operation of the plant. That goes to the Maine Company every month.

Mr. Welch: If Your Honor please, I should like to mark as an exhibit this report for the month of December, 1933, only and do so, if I may, without removing it from the book because it is a bound book.

Any objection to it?

Mr. Clark: No.

The Member: Is that a typewritten page?

Mr. Welch: It is a form.

The Member: I was wondering whether a copy of it could not be substituted.

Mr. Welch: Let the record show—I shouldn't say that.

The Member: If your adversary is willing to have a copy of it without the book itself.

Mr. Pierson: May we see that, please, before you offer it?

Mr. Welch: Yes.

The Member: We can reserve a number for it.

You have got the forms, I suppose?

Mr. Welch: Indeed.

Mr. Clark: What is the purpose, Mr. Welch, in this?

Mr. Welch: I should think it was quite obvious, Mr.

Clark. We want to show that the Produce Terminal reports monthly to the Maine Company what it has done.

Mr. Clark: But why the detail of it?

Mr. Welch: I am interested to show that everything Produce Terminal does is reported in full detail to the Maine Company.

Mr. Pierson: I see no objection to it.

Mr. Welch: Then, if Your Honor please, I should suggest this, that we mark this December in the book with an agreement that Counsel for the Petitioner may substitute a photostat or a copy after the trial is closed.

The Member: That may be done. Let it be marked.

Always with the right of the Respondent to call attention to any inaccuracies which verification may disclose.

Q. 142. (By Mr. Welch). Mr. Henkle, were reports identical in character to those in Exhibit 11, were reports identical in character to those in Exhibit 11 made by the Produce Terminal to the Maine Corporation during the years 1930 and 1932 as well as in 1933? *A.* Yes, sir; every month.

Q. 143. Who decides who shall make up the board of directors of the Produce Terminal? *A.* The Maine Company.

Q. 144. Who selects your bank depositories? *A.* The Maine Company.

Q. 145. Was there a substantial installation of new machinery in Produce Terminal in 1932 and 1933? *A.* Yes, sir.

Q. 146. Was that matter discussed with officers of the Maine Company? *A.* Yes, sir.

Q. 147. To what extent, Mr. Henkle? *A.* Well, Mr. Leonard and I figured out what we thought we needed in the way of additional equipment, and it was discussed with the Maine Company and they approved our going ahead with the improvements.

Q. 148. Have there been any occasions, Mr. Henkle, when

suggestions of yours as to something you wished to do about Produce Terminal have been turned down? A. Yes, sir.

Q. 149. Go back for a moment to that installation of machinery. From whence did the money come? A. It came from the Pau Corporation and the Pau Corporation received it from the Maine Corporation.

Q. 150. Can you give us a sample, Mr. Henkle, of a suggestion of yours on behalf of Produce Terminal made to the Maine Company which was turned down? A. Mr. Leonard and I felt we should have a larger addition to the power house than that we finally succeeded in getting, and we wanted a greater capacity and a larger power house than we succeeded getting them to build.

Q. 151. When was that, Mr. Henkle? A. That particular instance was in 1936 and 1937.

Q. 152. I would like to ask you, Mr. Henkle, if the Transit Company makes reports to the Maine Company of its operations? A. It does.

(Mr. Welch shows a bound volume to Mr. Clark.)

Mr. Welch: This is the same sort of a document.

Q. 153. (By Mr. Welch). I show you a book, Mr. Henkle, called "Summary of Operations," the month of December, 1933, and ask you if that is a sample of the report that the Transit Company makes to the Maine Company? A. It is.

Q. 154. How often is such a report made? A. Every month. It contains 32 pages.

Mr. Welch: I should like to offer this as a sample report under the same arrangement that a copy may be substituted after the evidence is closed.

The Member: Is there any objection?

Mr. Pierson: No objection.

The Member: It is received.

(The document so offered and received in evidence, was

marked "Petitioner's Exhibit 12," and made a part of this record.)

Q. 155. (By Mr. Welch). Mr. Henke, during the years 1930 and 1932 as well as in 1933 was the Transit Company making these monthly reports to the Maine Company? A. Yes, sir.

The member: Let me ask you about that: You say they were making reports to the Maine Company. Were they making the reports directly to the Maine Company or were they simply sending to the Maine Company copies of reports that were otherwise made?

The Witness: They were copies of reports, Your Honor, that we made of the operations all through the month and when completed for our own operating knowledge and assistance, that copy was sent to the Maine Company every month.

The Member: Was there a copy of it also sent to the New Jersey Company?

The Witness: We sent two copies to the East, and I suppose one might be for the Jersey Company and one for the Maine Company.

The Member: But they weren't expressly made as reports to the Maine Company; they were simply copies sent to the Maine Company of reports otherwise made; is that right?

The Witness: That is correct, yes.

Q. 156. (By Mr. Welch). Were they requested by the Maine Company? A. Yes, sir. I would say they were ordered by the Maine Company.

Q. 157. I think previously in your testimony you have said something about some litigation with the Department of Agriculture on re-weighing charges. A. Yes, sir.

Q. 158. Was there a period during which your re-weigh

ing charges were in question in this litigation? A. Yes, sir.

Q. 159. During that period did you continue to collect at the old established rate? A. We did.

Q. 160. What was done with the re-weighing charges that you collected during the period of the litigation? A. They were impounded in the bank.

Mr. Welch: Would somebody give Mr. Henkle a copy of the balance sheet and income statements of the Transit Company because I want to ask him some questions about it?

(Mr Green hands documents to the witness.)

Q. 161. (By Mr. Welch). At what exhibit attached to the stipulation are you now looking? What is the number of it? A. S-3.

Q. 162. Look at the year 1921 for me, will you, please, and let me ask you if that is the year in which this litigation began? A. Yes, sir.

Q. 163. Does Exhibit S-4, attached to the stipulation, show your cash at the end of December 31, 1921? A. Yes, sir.

Q. 164. Does that item of cash at the end of that year include these impounded re-weighing charges? A. No, sir; because they were in the bank in a separate account.

Q. 165. Look at the other side of the sheet for a moment and see if you do not find that the re-weighing charges are in the cash and compensated with a balancing item on the other side. A. Yes, that is correct. I was looking at the net amount.

Q. 166. So that the re-weighing charges do appear in cash at the end of 1921? A. Yes, sir.

Q. 167. And to what extent, sir? A. Mr. Welch, could the accountant—

Q. 168. I know your difficulty and I will help you in a moment.

I will just refer to the stipulation. Make such use of

the stipulation itself (handing document to the witness) on record in the case as you need to and then tell us, if you will, how much impounded re-weighing charges are included in your cash at the end of 1921. A. $33,655.10 for that year.

Q. 169. Go to the next year and tell us the amount. A. $206,185.85.

1923—

Q. 170. Wait a moment.

Mr. Henkle, I am not asking you from year to year how much was impounded in each year. I am asking you to state for us if you will the total cumulative amounts impounded from year to year.

Do you follow me? A. Yes; I have it in another column.

Q. 171. Yes.

Now, to what extent were re-weighing charges impounded as of the end of 1922? A. $239,840.95.

Q. 172. And is that item included in your cash that year? A. Yes, sir.

Q. 173. Will you identify for us the compensating item on the other side so that we will know what its legend or name is? A. That will be found in the clearing account among other items in that account.

The Member: Just a moment.

What did you say the amount was, $239—

The Witness: $239,840.95.

The Member: That was the end of 1922?

The Witness: Yes, sir.

The Member. And the clearing account shows $237,761.51.

The Witness: Your Honor, there are other small items—that is apparently the total of the clearing account which includes that item.

The Member: That is what I am interested in. You say that $237,761.51, which is the clearing account, includes an

item of $239,000, which is the impounded funds. I would like to understand that.

The Witness: If we have the account here for 1922 I could show Your Honor in that same account some other small items which leaves the balance of the clearing account as the figure that you have while—

The Member: You mean charges against it?

The Witness: No. They have no relation to that particular item.

The Member: My point is you have said a figure of $237,000 clearing account includes a figure of $239,000, which is $2,000 more, which is the impounded fund, and I am asking you now whether that difference is made up by virtue of some charges against the clearing account or otherwise, and I haven't yet heard any explanation.

The Witness: The difference is accounted for by charges into the clearing account of other items that have no relation to this.

The Member: But they are charges; that is the point.

The Witness: Yes, sir.

Mr. Welch: If Your Honor please—

The Member: Perhaps it is not important. I don't know. I wanted to be sure it was not an inadvertent statement because $237,000 can't include $239,000 unless there is a charge against it.

Mr. Welch: The witness has made a correct answer, and I think Your Honor understands all I am trying to show is how these impounded funds were built up, and then released one year which swelled the income very greatly for that year.

The Member: That is bringing it into the 1932 figure to which you referred yesterday?

Mr. Welch: That is correct.

Q. 174. (By Mr. Welch). Now, would you run along, Mr.

Henkle, and tell us year by year how your cash was swelled by the impounding of this fund. A. At the end of 1923, $431,101.85; 1924, $761,200.72; 1925, $1,050,020.48; 1926, $1,307,987; 1927, $1,547,133.97; 1928, $1,780,796.50; 1929, $2,013,523.54; 1930, $2,243,786.82; 1931, $2,426,433.29.

Q. 175. Now, was that fund at some time released from impounding and placed with your general funds? A. It was.

Q. 176. When was that, Mr. Henkle? A. In 1932.

Q. 177. I take it, then, that the litigation ended at that time? A. Well, it had ended when the period at which it was definitely concluded that the money might be taken into our earnings had arrived.

The Member: That figure you say was two million four hundred and some odd thousand?

The Witness: $426,433.29, Your Honor.

The Member: Was it you who were on the stand yesterday when we talked about this figure of 1932 income, or was it your predecessor, Mr. Leonard?

The Witness: I was on the stand when that question was brought up.

The Member: You remember, don't you, that we tried to get a curve of net income for 1930 to 1933, and the testimony indicated that from one million ninety-two thousand in '30 to eight hundred and thirty-one thousand in '31, it dropped to about $550,000 because of the subtraction of the two million dollars?

The Witness: Yes, sir.

The Member: Of impounded funds.

Now, am I to understand that the earnings by reason of that exclusion of the impounded funds instead of being $550,000 would come to about $100,000 in 1932; is that right?

The Witness: No, Your Honor. The 1932 earnings were affected by this $2,426,433.29 being taken into the accounts

in that year under our earnings less about $400,000 of tax which made an unusual and non-recurrent item of $2,000,000 in our earnings for that year.

The Member: That is, the operating income, then, would have been a hundred and some odd thousand plus the four hundred thousand which you say was tax so as to make a true operating income of $500,000?

The Witness: I had that figure. It seems to me that year it was about $531,000 after making that correction.

The Member: So that after all, the five hundred thousand figure is the result of more or less normal operating income after excluding the $2,400,000 of impounded funds; is that right?

The Witness: That is correct, except that that—

The Member: All right.

The Witness: —was a very small year.

The Member: Well, I am only seeking to get the approximate trend of the curve. That is all I am interested in.

Mr. Welch: I understand that.

Q. 178. (By Mr. Welch). Will you look at S-4 attached to the stipulation, Mr. Henkle, and tell me whether or not there is on your balance sheet, in the year 1930, an item of "100,000 Chicago real estate bonds." *A.* I don't see it in S-4, Mr. Welch.

Q. 179. I hope I haven't given you the wrong number. *A.* Oh, it is farther down in the middle of the page.

Q. 180. Have you found the item to which I am referring? *A.* Yes, sir.

Q. 181. What is the item, please? *A.* It is $100,000 of Chicago real estate bonds taken over from the Stock Yards Trust & Savings Bank.

Q. 182. Are you familiar with the nature of that investment at that time? *A.* I am.

Q. 183. What was it? *A.* Well, they were real estate

bonds that were slow, and in order that the bank which needed the money at that time might have that amount, we purchased them from the bank.

Q. 184. In 1930, Mr. Henkle, was it possible to dispose of those bonds at anything like their face value? A. No, sir.

Q. 185. Now, the same bonds are carried, are they not, in 1931, '32, and '33? A. Yes, sir.

Q. 186. On S-4? A. Yes, sir.

Q. 187. Is what you have said about them equally applicable to the years '31 and '32? A. Yes.

Q. 188. As to the year 1933? A. Absolutely.

Q. 189. Had you been able to sell any of them by the end of 1933? A. No, sir.

Q. 190. Have you ever been able to? A. No, sir.

Q. 191. Will you look at your balance sheet for 1930 again, S-4, and see if you find an item of $464,000 "Capital Stock of the Stock Yards National Bank"? A. Yes, sir.

Q. 192. Just read the item to me, if you will. A. "Investments in Stock Yards National Bank, capital stock, $464,000."

Q. 193. Were you a stockholder in that bank personally? A. I was.

Q. 194. Did you have knowledge of the salability of that stock? A. I did.

Q. 195. What was its salability? A. Well, there wasn't any salability.

Q. 196. I think that item continues on your books in '31 and '32, and disappears in '33. Will you tell me if that is correct? A. Well, at the beginning of 1933 the bank was closed, and under the arrangement by which the bank was finally opened, the stock of the Stock Yards National Bank became without value.

Q. 197. Now, will you look again at the year 1932, on S-4,

and tell me if you find an item of investment in Stock Yards Investment Company debentures? A. Yes, sir.

Q. 198. What is the item and what is the amount? A. It is $1,340,000. That was—

Q. 199. Well, I asked you to read the item. What is the item? A. "Stock Yards Investment Company Debentures, $1,340,000."

Q. 200. Yes. What was that investment? A. The Stock Yards Investment Company issued debenture bonds on various notes, securities, and general collateral which had been taken out of the bank because the Government examiners had classed it as slow and doubtful paper and not suitable for remaining in the bank at that time.

Q. 201. What bank was that, Mr. Henkle? A. It was the Stock Yards National Bank.

Q. 202. Yes. Go ahead.

Have you told us—

The Witness: Will you read the answer as far as I got? (Answer read.)

Q. 203. (By Mr. Welch). How did it happen that the Transit Company acquired debentures? A. Why, in order to be of assistance to the bank in its operations and to keep the bank going.

Q. 204. Did Produce Terminal also acquire some for the same reason? A. Yes, sir.

Q. 205. What amount? A. $350,000.

Q. 206. Now, looking again at Transit Company, what year are you telling me now where they first appear, Mr. Henkle? A. 1932.

Q. 207. Look at the next year for me and see if you find the same item at a different figure, will you, please? A. Yes, sir.

Q. 208. What is the item and what is the figure? A. $149,620.23, the value at the end of 1933 of those bonds.

Q. 209. That item, then, the shrunken value, represents a write-off from the original amount down to that statement; is that correct? A. That is correct.

The Member: Without any disposition of the debentures at all?

The Witness: That is correct, Your Honor.

The Member: Can we find out now what the investment company is?

Mr. Welch: Well, I was going to ask him another question or two.

The Member: All right. Before you leave that, I mean.

Q. 210. (By Mr. Welch). Was the item at some time written down to zero? A. Well, at the end of December 31, 1933, it had been written down to $149,620.23, and I am sure that since that time it has been completely written off.

Q. 211. And the reason for that, Mr. Henkle? A. Well, it is because the bonds were unsalable and the collateral behind them had so shrunk that they were without value.

Q. 212. Were these debentures salable in either 1932 or 1933? A. No, sir.

Mr. Welch: Now, I am not sure whether Your Honor wants something else asked about them or not.

The Member: I want to ask two questions: One, did you make an effort to sell them?

The Witness: I don't know, Your Honor, whether such effort was actually made or not, but—

The Member: What is it you mean when you say that they were not salable.

The Witness: Well, the paper that these bonds represented was not salable, and that was the reason they were taken out of the bank. They couldn't be sold at that time.

The Member: Well, that is what I am trying to find out, how you know that.

What makes you think that?

The Witness: Well—

The Member: They were not salable if you didn't attempt to sell them.

The Witness: Well, I knew the character of these securities. They were on live stock ranches, and you couldn't sell them at any price at that time, neither the bonds nor the collateral behind them.

The Member: And one other question: What was the Investment Company?

The Witness: The Western Investment Company was formed for the purpose of taking out of the bank the paper that had been classed as slow and doubtful, and the banking authorities—the Government banking authorities insisted that that must be taken out of the bank, that it was not suitable collateral to remain in the bank.

Q. 213. (By Mr. Welch). May I ask you whether or not when they were taken out of the bank, money to the extent of their face value was put in? *A.* Yes, sir.

Q. 214. By whom? *A.* By the Transit Company.

Q. 215. You have mentioned this Stock Yards National Bank and the Stock Yards Trust & Savings Bank; is that correct? *A.* That is correct.

Q. 216. And you have told us about doing these things in connection with those banks.

What was the purpose of the Transit Company in doing what it did about these banks? *A.* Well, to a stock yards a bank is a very important necessity. The bank is there not only to have the deposits of the commission men have their own funds, but also have the funds that are on the way to the producer who has shipped live stock into the stock yards. The buyers and sellers in the market use it for their private and business accounts. The bank will loan money to a farmer who has feed and wants to buy live stock but has no money. They will loan him the entire amount neces-

sary to buy cattle to take back to his farm to eat his grain and his grass, and when it is returned then the bank is payed off at the time the animals are marketed. And that is the whole process of the live stock industry.

In addition to that, there are accounts of many country banks. At that time there were more than 100 country banks that had funds in the Stock Yards National Bank for the convenience of their customers in getting their money back when they had sold their live stock. In fact, the bank is about the first thing you have to establish and maintain in a stock yards. It is absolutely essential, and if anything happens to the bank then, certainly, a farmer would not want to ship stock to a market where he was in doubt whether he would get his money back. And we must have a fair and solid name if we are going to be of use to the market. That was what we wanted to protect.

Q. 217. Will you look again at S-4, at the end of December 1, 1933, and see if you find an item of "Subordinated Funds." *A.* Yes, sir. The last item is "Subordinated Funds, $1,300,000."

Q. 218. What does that item represent? *A.* That item represents money that we had on deposit in the bank at the time it was closed. In order that it might be opened, by arrangement with the banking authorities, we had to subordinate that cash to the deposits of others in the bank before it could be placed in position to again open.

Q. 219. Do you know what the ultimate recovery from those subordinated funds has been? *A.* There has been no recovery from those funds.

Q. 220. As at the end of 1933 was it possible for you to withdraw any of those funds, Mr. Henkle? *A.* No, sir.

Q. 221. Will you look at the balance sheet of Produce Terminal, which is S-215, Mr. Henkle? Will you look at the end of 1931, December 31, and see if you find an item there

of Chicago real estate bonds? A. Yes, sir; I find an item of $490,500 of Chicago real estate bonds taken over from the Central Manufacturing District Bank.

Q. 222. What was that bank? A. That was the bank in the center of the Central Manufacturing District which we have described before as a great industrial industry—great industrial district, having many large industries that keep their funds in that bank.

Q. 223. Of what did this investment consist? A. The real estate bonds which were taken over from the Central Manufacturing District bank were bonds that the examiners had classed as slow and doubtful, and in order that they might have cash in their vaults instead of these bonds, the Produce took over $490,500 worth of bonds and gave them cash therefor.

Q. 224. At what price or value were they taken over? A. The price of $490,500 was the par value of those bonds.

Q. 225. And how about their salability? A. They were unsalable.

Q. 226. That item appears, I think, at the end of 1932, and again with a slightly different value at the end of 1933; is that right? A. Yes, sir.

Q. 227. Does what you have said about their salability apply to '32 and '33 as well as '31? A. Yes, sir.

Q. 228. Now look at the balance sheet of the Produce Terminal, which is S-15, and see if at the end of 1932 there is an item of $350,000 Stock Yards Investment Company debentures? A. Yes, sir.

Q. 229. You mentioned those, I think, before, didn't you? A. No.

Q. 230. Are these debentures the same sort as the Transit Company's debentures of $1,340,000? A. Yes, exactly the same.

Q. 231. Exactly the same? A. Yes, sir.

Q. 232. And does what you have told us about those debentures that the Transit Company took out of the bank apply equally well to what Produce Terminal took out? *A.* Yes, sir.

Q. 233. One further item on Produce Terminal's balance sheet, at the end of December, 1933. Is there an item of subordinated cash? *A.* Yes, sir; of $300,000.

Q. 234. What is that item, sir? *A.* That is the amount of cash in the Stock Yards National Bank that had to be subordinated to the general depositors before the bank could be reopened.

Q. 235. Was it subordinated to any one other than the general depositors? *A.* It was subordinated to the subordinated cash of the Maine Company.

Q. 236. So that the Maine Company's deposits on the first level were subordinated; is that right? *A.* That is correct.

Q. 237. And yours on a level below subordinated, in turn, to the Maine Company? *A.* That is correct.

Q. 238. Has there been any recovery from that subordinated cash, Mr. Henkle? *A.* There has been no recovery, sir.

Q. 239. At the end of 1933 was it possible for you to withdraw that cash or any part of it in any way? *A.* No, sir.

Q. 240. What was the purpose of Produce Terminal in coming to the aid of these banks? *A.* Well, the Produce Terminal served the entire district and all of its industries with light and power, and if this bank had failed, it was unable to go on, so that the industries in the district could not have their cash on which to operate, they would have had to close or shorten down, and then, of course, the Produce would have lost its customers, part of them, or there would have been greatly reduced requirements.

Q. 241. Just one thing further, Mr. Henkle: Will you tell

us what Produce Terminal needs in the way of ordinary working capital? A. About $300,000, I should think; at least.

Mr. Welch: You may inquire, Mr. Clark.

Mr. Clark: Your Honor, I take it there would be no objection to Mr. Pierson's conducting cross-examination.

The Member: No, as long as he does it all, as to this witness.

Mr. Clark: Yes.

The Member: That is all right.

Mr. Clark: I just wanted to be clear.

The Member: The only thing is I don't want a witness to object to what turns out to be the heckling of two or three if you can exchange places. As to any one witness, I don't care what counsel is designated to examine him as long as it is confined to but one.

Cross-Examination.

X-Q. 242. (By Mr. Pierson). Mr. Henkle, in your direct testimony you testified with regard to the increased size in the production of steers? A. Yes, sir.

X-Q. 243. I take it that you don't mean to tell the Board that it is the Chicago Transit Company that has developed this, themselves. Is that the impression you mean to leave? A. I think in your question that you said I talked about the increased size of steers.

X-Q. 244. Yes. A. I said the size of the steer had decreased and that that had resulted from the work of the Live Stock Exposition and to the benefit of the Transit Company because it was a more economical animal for the live stock producer to raise; the smaller animal I was talking about; and that has now been developed.

X-Q. 245. But that development, Mr. Henkle, also is the result of the activity of the Department of Agriculture and

other Government agencies, isn't it, aside from that? A. Certainly. They were there and exhibited every year with all sorts of charts and instructions as to how you could improve your feeding. They were a part of the exposition.

X Q. 246. Mr. Henkle, I believe that you testified that the Maine Company was looked to by the Produce Terminal Corporation from time to time for funds necessary for its activities; is that correct? A. That is correct.

X Q. 247. Do you know whether Produce Terminal Corporation paid any dividends in the taxable years here before the Board, 1930, 1931, and 1932? A. They did.

X Q. 248. And do you know to whom that dividend was paid? A. It was paid to the stockholders, and the Maine Company was the stockholder.

X Q. 249. That is, it was a hundred percent stockholder. A. Yes, sir.

X Q. 250. Mr. Henkle, I believe you stated in your direct testimony that you were an officer and director in the Transit Company? A. Yes, sir.

X Q. 250½. And in the Railway Company? A. I am a director of the Railway Company.

X Q. 251. And the Railroad Company? A. A director.

X Q. 252. And also in the Produce Terminal Company? A. Vice-president and director.

X Q. 253. And in what other companies, if you will restate those, if you please? A. First as the vice-president and director of the Union Stock Yard and Transit Company, and in addition to the ones I named I am vice-president and director of the Stock Yards Harness and Saddlery Company that was mentioned here yesterday.

X Q. 254. Now, Mr. Henkle, do you know whether Mr. Prince was an officer and director in any of these companies? A. Beginning with the Union Stock Yard & Transit Company, Mr. Prince is chairman of the board and a

director; of the Railway Company, he is a director; of the Railroad Company, he is a director. That is correct, with regard to those three companies.

X-Q. 255. Can you see this chart (indicating chart) from where you are sitting, Mr. Henkle?

The Member: Give him this. (A smaller duplicate of the chart referred to was handed to the witness.)

X-Q. 256. (By Mr. Pierson). I wish you would also state if you know in what other companies Mr. Prince was an officer or director, which appears on Petitioner's Exhibit 1, aside from those that you stated? *A.* As a director of the Live Stock National Bank of Chicago. I do not know whether he is a director of the Central Storage and Forwarding Company. I believe that is all.

X-Q. 257. Isn't he a trustee in C. M. D.? *A.* Oh, yes, sir.

X-Q. 258. Mr. Henkle, I show you what has been introduced in evidence as Petitioner's Exhibit 5 with respect to which you testified yesterday.

Am I correct in stating that this picture was taken after our taxable years 1930 to 1933? *A.* I so stated, and that is correct.

X-Q. 259. I believe you further stated, Mr. Henkle, that some portion of the stock yards which is shown here in Petitioner's Exhibit 5 has not been rebuilt. *A.* That is correct.

X-Q. 260. Now, Mr. Henkle, with respect to that which has been rebuilt, what type of pens did they put in? *A.* The same type as before, sir.

X-Q. 261. That is, wooden pens? *A.* Yes, sir.

X-Q. 262. And, Mr. Henkle, wasn't that done with funds from the insurance company that was received after the fire? *A.* That is correct. It was from the general funds received from the insurance company.

Not all the properties, however, were restored.

X-Q. 263. The Maine Company didn't give you any funds to rebuild, did they? A. Oh, yes, they did. Take, for instance, the International Amphitheater. We didn't need to rebuild that, but Mr. Prince was so much interested in the success for the industry of that exposition that he wanted to see that continued, and so allowed us a million and a quarter dollars for that particular purpose out of the insurance funds.

X-Q. 264. Out of the insurance funds. A. Yes, sir; but we didn't have to do it. We could have kept it and gone home.

The Member: Will you answer the question as to whether the Maine Company actually provided funds for the reconstruction of any of the burned properties? You said "Yes," and then you explained it by showing they let you use the insurance funds.

Did they, in fact, give you any of their own funds to do it with?

The Witness: They did not, Your Honor.

X-Q. 265. (By Mr. Pierson). Mr. Henkle, I believe you testified that the Produce Terminal Corporation made in one of the years—I have forgotten which year—some substantial installation of new machinery. A. Yes, sir.

X-Q. 266. Did they get the funds from the Maine Company with which to install that new machinery? A. The Pan Corporation furnished money to put in a new pulverizing system, coal pulverizing system, and some other new and extensive equipment.

The Produce Terminal was adding to its equipment from time to time, as it could, out of its funds but not to an extent that was necessary at the time the Pan Corporation installed the machinery.

X-Q. 267. And at the same time the Produce Terminal Corporation was paying out substantial dividends, in these

years? A. Yes, sir; and the dividends were going to the same source from which we received the money back.

X.Q. 268. Mr. Henkle, with regard to the reports which have been introduced in evidence as Petitioner's Exhibits 11 and 12: In submitting those reports by the Produce Terminal Corporation, did they not go direct to the New Jersey Company first?

Mr. Welch: Have the exhibits both been admitted?

The Member: If they have not been admitted formally they may be received at this time.

(The document so offered and received in evidence, was marked "Petitioner's Exhibit 11," and made a part of this record.)

The Witness: What was your question?

(Question read.)

A. They go to the New York office or the Boston office, wherever we are directed to send them; two copies.

X.Q. 269. (By Mr. Pierson). And in what manner does the Maine Company request those reports from the Produce Terminal and the Transit Company? A. Well, they have had them so long that I have no recollection of the original request, but I have no doubt we were instructed originally many years ago to send them every month.

The Member: Let me ask you: Looking at this printed form—if I may interrupt you, Mr. Pierson, without any inconvenience?

Mr. Pierson: Yes, it is perfectly all right.

The Member (Continuing): —looking at this printed form I am led to ask the question as to whether this report is designed primarily to answer a demand of the Commerce Commission for such a report.

The Witness: That is correct, Your Honor.

The Member: Who is it that devised the form, the printed form of this report?

The Witness: There is a form of report that is required by the Illinois Commerce Commission, and that also goes to them and is in their form, as you have stated.

The Member: Do you make a report as well to the Interstate Commerce Commission; that is, does this corporation?

The Witness: We make an annual report, Your Honor.

The Member: Now I ask you, then, whether this report which is in evidence as Petitioner's Exhibit 11, called "Summary of Operations for the Month of December, 1933," is prepared primarily because of the Illinois Commerce Commission's demand and is a report in the first instance to that Commission?

The Witness: That is correct, Your Honor.

The Member: And when you speak of a report to the Maine Corporation or to the New Jersey Corporation, or anyone else, am I correct in my understanding that you mean simply that copies of the report that you make to the Illinois Commerce Commission are sent to these eastern offices?

The Witness: That is correct, Your Honor.

The Member: You don't prepare them for the purpose of making a report to the eastern offices but only to send them a copy of the report sent to the Commission; is that correct?

The Witness: That is correct, but we would have to prepare one for them if we didn't have this report.

The Member: That is, you think you would. You don't know whether you would make the same report or not, do you?

The Witness: That is correct, Your Honor.

The Member: Is that also true as to Exhibit No. 12?

The Witness: Yes, Your Honor.

The Member: All right.

X-Q. 270. (By Mr. Pierson). Mr. Henkle, I show you a report which is designated here as the Union Stock Yard and Transit Company of Chicago Live Stock Report. Are you familiar with that, and will you state to the Board just what it is? A. This is the seventy-second annual Live Stock Report of the Union Stock Yard and Transit Company of Chicago for the year 1937 and summaries for 1865 to 1937.

X-Q. 271. And this is your name which appears on the first page under the cover? A. Yes, sir.

Mr. Pierson: I would like to have that marked for identification, Your Honor.

The Member: Aren't you going to offer it?

Mr. Pierson: Not at this time. I will offer it later.

The Member: For identification, what, Mr. Clark?

The Clerk: This will be Respondent's Exhibit A, for identification.

X-Q. 272. (By Mr. Pierson). Now, Mr. Henkle, I show you the document which you have just described and which has been marked for identification as Respondent's Exhibit A, and call your attention to the figures contained on page 5 and beginning with the year 1911.

Will you examine those, please, and state to the Board just what they are.

Mr. Welch: If Your Honor please, it sounds to me as if this is being treated as though it were in evidence, and I doubt if I have any objection to it, but—

Mr. Pierson: I beg your pardon (handing document referred to to Counsel for the Petitioner).

I beg your pardon.

Mr. Welch: There can be no objection to its going into evidence, sir.

The Member: That is why I asked. I think there is an awful lot of time wasted by marking them for identification first, especially when there is no objection, and then offer-

ing them later. You might just as well put them in in the first place.

Mr. Pierson: All right, Your Honor.

I will offer it in evidence.

Mr. Welch: No objection.

(The document so offered and received in evidence was marked "Respondent's Exhibit A," and made a part of this record.)

Mr. Pierson: What was the last question, Mr. Reporter? (Last question read.) A. This is a table of receipts of stock by species for 72 years.

X-Q. 273. (By Mr. Pierson). After examining this—and that states as to the type of live stock which you received; is that correct? A. Yes, sir; cattle, calves, hogs, sheep and horses.

X-Q. 274. Mr. Henkle, reading down in the second column, isn't it a fact that in 1930 to 1933 the amount of live stock receipts in all of those years was less than in the years 1917 through 1920, and from 1922 through 1926? A. Well, Mr. Pierson, you can't judge by the second column as the receipts of live stock. There is another table that shows the receipt of all live stock.

The column at which we are looking is cattle, alone.

Mr. Welch: Mr. Pierson, may I interrupt?

I have a copy, too; would Your Honor like to follow?

The Member: Not until I need it.

X-Q. 275. (By Mr. Pierson). With respect to the cattle, which is contained in that second column. A. What is the question?

X-Q. 276. That is, in the years 1930, 1931, 1932, and 1933 the amount of receipts were less than in the years just previously mentioned; that is, 1917 to 1920? A. That is correct.

X-Q. 277. And also 1922 to 1926? A. That is correct.

X-Q. 278. That is likewise true, isn't it, Mr. Henkle, with regard to calves received? A. That is correct.

X-Q. 279. And also true with respect to hogs received? A. Well, the receipts of hogs in 1911 are less than they were in 1933 but in 1924 they were very much greater. That is in the middle column.

X-Q. 280. Yes, sir.

Now, with respect to sheep? A. They were very much less in 1930 to 1933 than in 1911, although the receipts had varied between those two periods.

X-Q. 281. Now, is that likewise true with respect to horses? A. Yes; the horses are very much less.

X-Q. 282. Now, Mr. Henkle, after examining this report do you still want to state to the Board that your facilities were in 100 percent use in these years 1930 to 1933? A. I haven't made any such statement.

X-Q. 283. Just what is the condition, then, in 1930 to 1933 with regard to use of facilities in the stock yards? A. We have sufficient facilities, such as they are, for handling the business that we have today.

X-Q. 284. And you have excess facilities there, do you not? A. No, I wouldn't say so.

X-Q. 285. Well, you could handle, according to your statement, you could handle an amount back in these years which was greatly in excess of the amount which you are now handling, in 1930 and 1933. A. I did, but I didn't tell you the conditions under which you handle 122,000 hogs. If the capacity of the Willard Hotel is a thousand people with two in the room, if you put four in the room the capacity would be greatly doubled, and if you put them on cots in the halls you would be still having a greater number, and that is what we have to do when we have these large runs of hogs. We wouldn't have suitable facilities for handling 122,000 hogs if we had other species of animals there the

same day, and if we didn't use the chutes and alleys and the streets and every available part of the property for it. We wouldn't figure we had facilities for doing that properly.

X Q. 286. Do I understand you to mean by that, Mr. Henkle, that you use every available building and every available part of space in the stock yards, at the present time? *A.* No, sir; we do not; we never did.

The Member: Can you answer the question categorically as to whether during the period beginning in 1930 and ending at the end of 1933 you had at that time facilities in excess of the necessities of your business? That is to say, the necessities as evidenced by the number of live stock which you were called upon to handle?

The Witness: No, I don't consider that we had facilities in excess of what we would have to take care of emergencies and unusual situations.

The Member: No; to take care of the business that you had? Did you have facilities in excess of what you needed to take care of the business that you had?

The Witness: We did at times, Your Honor; yes, sir.

X Q. 287. (By Mr. Pierson). And that is during the years 1930 to 1933? *A.* That is correct, but we still didn't have our new hog houses.

The Member: We will take a short recess for five minutes. (There was a short recess taken.)

X Q. 288. (By Mr. Pierson). Mr. Henkle, when Transit Company and Produce Terminal Company came to the assistance of the banks, did they purchase the securities at prices greater than the then existing market value of those securities? *A.* They did.

X Q. 289. And, Mr. Henkle, the transaction, then, wasn't one entered into for profit on behalf of those corporations? *A.* No, sir.

Mr. Welch: Just a moment. I think that is objectionable

and that is a question of law, and I should like to have the question and answer stricken out.

The Member: I will deny that motion. It is not an issue in this case and therefore the question as to whether it is a question of law or not isn't involved here. Were it not for a statute, I should think that any witness in a position to know the facts would be permitted to testify as to whether a transaction is entered into for profit. The legal construction is not in issue in this case, so it doesn't seem to me that it is a question of law.

Mr. Welch: Well, I then have this difficulty with the word "profit." The witness has testified that the transaction was entered into for the benefit of the companies that were interested in seeing a sound bank adjacent to the stock yards. Now, the word "profit" as used, then, this way is sort of double-barreled, and I have that difficulty, if Your Honor follows me.

The Member: I think I follow you, and it seems to me that if you are correct on it, that makes the question and answer entirely harmless and innocuous. Whether you are right or not, I am not saying, but if you are correct it seems to me it is not necessary the answer be stricken.

X-Q. 290. (By Mr. Pierson). Mr. Henkle, when these purchases were made by the Transit Company and Produce Terminal Company of the securities, and the banks were assisted by the purchase of the securities, the other creditors and the stockholders got the benefit just the same as the Produce Terminal and Transit Company, did they not?

The Member: Well, I should think that was a question that the witness is wholly incompetent to answer.

Mr. Pierson: Well, I will strike that question. (By Mr. Pierson). Mr. Henkle, was it required by anyone that you make these investments in the banks?

Mr. Welch: Just a moment.

If Your Honor please, that seems a very blind question to me. I don't quite understand it myself.

The Member: Do you understand the question, Mr. Witness?

The Witness: I do not, Your Honor.

Mr. Pierson: I will restate the question.

X-Q. 291. (By Mr. Pierson). Mr. Henkle, then the purchase of these securities by Produce Terminal and Transit Company was a purely voluntary act on the part of those companies; is that correct? *A.* Well, I assume that the assistance they were extending to the bank would rather be involuntary. We thought it was necessary, and we did it, but we wouldn't volunteer to do anything of that kind.

X-Q. 292. But its purpose, as I understand you have previously testified, was to keep the banking facilities there? *A.* That is correct.

X-Q. 293. And Produce Terminal and Transit Company wanted the banking facilities there, and they voluntarily made these purchases in order to see that they remained there? *A.* I believe that is correct, Mr. Pierson.

X-Q. 294. Now, that is likewise true with the subordinated funds, is it not, Mr. Henkle? *A.* Well, we are entering into a banking question that I am not particularly qualified to discuss.

X-Q. 295. I don't mean to go into the technical phase of it at all. I mean that so far as putting up the subordinated funds in supporting the banks is concerned, that was a voluntary act on the part of Produce Terminal and Transit Company, and they weren't under any compulsion to do that? *A.* No.

X-Q. 296. From anyone? *A.* No.

Mr. Pierson: That is all.

Mr. Welch: I have one or two questions that I would like to ask.

Redirect Examination.

Q. 297. (By Mr. Welch). Mr. Henkle, will you refer to Exhibit 12, which I think is before you, and which is the form of report that Transit Company sends to the Maine Company? Will you tell us, please, sir, who designed that report? *A.* This report in its present form has been developed over a long course of years by our own auditors and by President Leonard for our information in operating the company.

Q. 298. Speaking again to Exhibit 12, is a report in that precise form required by any regulatory body? *A.* No, sir.

Q. 299. Mr. Henkle may I return for a moment to the facilities at the yards in the years 1930 to '33? I think I should have asked you on direct if there has been a change during the past 10 or 15 years in the method in which live stock arrives at the yards? *A.* There has been a great change. Formerly a very large proportion of our receipts came by railroad, and many of them in train lots, but nowadays a large proportion of our receipts are received in trucks. These trucks require—it requires two or three trucks to have as much as a carload, and each truck averages between two and three owners. In other words, there is a tremendous number of small lots, and the handling of these animals requires not only large spaces for the big trucks to manipulate in the center of the yards, but suitable unloading platforms and pens, and smaller pens in which these cut-up lots may be handled. And if we have a run of 1200 trucks, we will say, in one morning it requires different and a great variety of facilities for handling all of those small lots of species.

Q. 300. Taking the years '30 to '33, how many trucks may or did, in fact, arrive on occasions in days through those years? *A.* It seems to me we had in that period more than 1200 trucks—more than 1200 trucks in one day.

Q. 301. Is the flow of live stock into the yards somewhat seasonal? *A.* It is seasonal and it is also irregular in season. In the fall of the year, we have the arrivals of the cattle from the western ranges that have grazed there all summer. They come in train lots and from long distances and are handled in large pens and in a separate section of the yards. Then at other times we may have heavy runs of cars of hogs at some different periods, but nobody knows when those periods may occur or whether there will be unusually large arrivals of all species or a particular species. The pens are designed for cattle pens, hog pens, and sheep pens, and are not entirely suitable for interchangeable use.

Q. 302. Taking the years 1930 to '33, inclusive, will you tell us whether or not in each of those years at some time throughout the year every section and every facility in the yards was used? *A.* At some time during the year all of our facilities are used at various times, but they are not used continuously, any of them.

The Member: Well, are they ever used and during those three or four years were they ever all used at once?

The Witness: There have been many times when all of the cattle pens would be used for cattle and at other times, not necessarily the same time, all of the hog pens would be full of hogs, and the same is true of the sheep, but they may not be—they may not arrive all at the same time, the heavy runs of the species.

Q. (By Mr. Welch): You were asked about the participation of the Transit Company and the Produce Terminal in coming to the assistance of these banks. *A.* Yes, sir.

Q. 304. And you were asked whether you were under any compulsion from any source as to what was done.

The Member: No. I am sorry to correct you. He was asked whether he was under any compulsion from anybody.

Q. 305. (By Mr. Welch). From anybody. Do you remember that question, sir? *A.* Yes, sir.

Q. 306. Did the Maine Company have anything to say as to what you should do or not do in respect of those transactions? *A.* Certainly.

Q. 307. And what did it have to say? *A.* Why, we had to consult with them as to whether we could do it or not.

Q. 308. And your orders came from where? *A.* From Mr. Prince.

Mr. Welch: I think that is all on this go-around, Mr. Pierson.

Mr. Pierson: Just a moment, Your Honor.

The Member: I think that is important.

Were you here when Mr. Pierson was making his cross-examination of this witness?

The Reporter: Yes, sir.

The Member: Will your read the last question of Mr. Pierson's? (The record was read as follows: "*Q.* I don't mean to go into the technical phase of it at all. I mean that so far as putting up the subordinated funds in supporting the banks is concerned, it was a voluntary act on the part of Produce Terminal and the Transit Company, and they weren't under any compulsion to do that? *A.* No. *Q.* From anyone? *A.* No.").

The Member: "From anyone."

Recross-Examination.

X-Q. 309. (By Mr. Pierson). Mr. Henkle, exactly what did the Maine Company say with respect to this? *A.* Well, they gave us authority to do it.

X-Q. 310. Was that written authority? *A.* No, sir.

Mr. Pierson: That is all.

Mr. Welch: That is all, Mr. Henkle.

The Member: Now, let me get this entirely clear. Your conduct as to the assistance to the banks, if I understand you correctly, was actuated by your own feeling of the economic necessity for you to do that?

The Witness: That is correct, Your Honor.

The Member: You weren't told by anyone who had any authority over you that you had to do it?

The Witness: That is correct.

The Member: You decided it all for yourself?

The Witness: We acted—well, we decided that it was necessary.

The Member: I mean to say, your company, the officers of your company were the ones who decided to do this?

The Witness: It was in our opinion necessary, and we asked for authority to do it.

The Member: And it was necessary only because of your economic interests to do it, wasn't it?

The Witness: I think that is correct.

The Member: You were in a position where you could have decided not to do it or decide to do it as you in your own individual wisdom thought it was wise to do; is that correct?

The Witness: No, we could only have made that recommendation, Your Honor.

The Member: Well, explain that.

The Witness: Well, we would consult with Mr. Prince as to whether he agreed with our recommendation and our opinion that it was absolutely necessary to be done.

The Member: Now, did anybody make any threat about it that required you to do it or else?

The Witness: No, sir.

The Member: Suppose you hadn't done it? Did you have any judgment at that time as to what would have happened to your interests if you had not done it?

The Witness: Well, we were sure it would be highly detrimental to our interests and the interests of our market if the condition was not corrected. It was complained of by the banking authorities and something had to be done about it or we wouldn't have any bank there.

The Member: Now, your own interests would have suffered, I take it, by reason of the fact that your customers would not have had the facilities ready at hand with which to finance their transactions; is that right?

The Witness: That is correct, sir.

The Member: Now, is that substantially the whole story?

The Witness: I think it is, sir.

The Member: All right. Have either one of you anything further?

Mr. Pierson: That is all, Your Honor.

Mr. Welch: Well, just one more question in line with His Honor's—

The Member: I don't want this subject to be left in the realm of a mere characterization by one person or another by the mere use of words. I want to find out what the substance is. Whether a thing is voluntary or whether a thing is under compulsion has a thousand connotations that I don't want to leave in the air.

Mr. Welch: That is all, sir.

The Member: Stand aside. (Witness Excused.)

The Member: Your next witness, Mr. Welch?

Mr. Welch: Mr. Austin, will you please take the stand?

MR. JOHN W. AUSTIN.

called as a witness by and on behalf of the Petitioner, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

Q. 1. (By Mr. Welch). Have you yet stated your name, sir? A. My name is John W. Austin.

Q. 2. And you were sworn just now? A. Yes, sir.

Q. 3. Where do you live? A. 11319 Hermosa Avenue, Chicago.

Q. 4. What do you do, sir? A. I am secretary and treasurer of the Chicago Junction Railroad Company and—

Q. 5. Let me interrupt. That is what we call the Elevated? A. The Elevated.

Q. 6. In this case? A. Yes, sir.

Q. 7. Go ahead, sir. A. The Union Stock Yards and Transit Company, the Part Corporation, the Stock Yards Harness and Saddlery Company, and assistant secretary and treasurer of the Produce Terminal Corporation.

Q. 8. Mr. Austin, I want you to tell us a little about the Railroad Company. That is the Elevated, as we try to call it here? A. Yes, sir.

Q. 9. That company, I take it, is not particularly active; is that right? A. That is correct. It was leased to the South Side Elevated Railroad.

Q. 10. Is it still operated as the—is the property still operated by them? A. It is operated by the receivers.

Q. 11. When did they go into receivership? A. In June, 1932.

Q. 12. Prior to that receivership what, if anything, did you do about the operation of the Railroad Company? A. Well, I collected the rental and deposited it with the trustees under the mortgage.

Q. 13. Is that all you did sir? A. Yes, sir.

Q. 14. Since the receivership, what, if anything, have you done? A. Well, I haven't—I, of course, haven't collected any rent. It has not been paid in at all.

Q. 15. What do you do about the interest on the bonds? A. Well, I get an amount from the Jersey Company which guaranteed the bonds.

Q. 16. And then pay the interest? *A.* And pay the interest to the trustees under the mortgage.

Q. 17. What has this railroad company, this elevated structure, in the way of assets? *A.* Well, it has the structure, the elevated structure only.

Q. 18. And no other assets? *A.* That is all.

Q. 19. Has the Railroad Company any other income, or ever had any other income other than the rent that you used to get from the South Side Elevated? *A.* It has not.

Q. 20. What transportation service does this Railroad Company, the Elevated, furnish? *A.* Well, that is the means by which employees of the stock yards and Packingtown that arrive by street car or elevated get to the Packingtown or the stock yards. It has—

The Member: Tell me, is Packingtown anything more than a vernacular for the community? Does it have any political or municipal significance?

Mr. Welch: It does not. The vernacular is used to mean packing houses west of the stock yards. That is in the vernacular referred to as "Packingtown," but it is pure vernacular.

Q. 21. (By Mr. Welch). Had you finished your answer? *A.* Well, then, I was just going to explain that the line runs into the yards and runs around Packingtown. It serves a territory that has no other street car or elevated service at all.

Q. 22. Mr. Austin, if some disaster such as a fire, or anything of that sort were to overtake the elevated structure, and it had to be rebuilt, what, if anything, could the Railroad Company do about it? *A.* Well, there is nothing to do but take the matter up with the Maine Company, have the Maine Company rebuild it and furnish the funds.

Q. 23. Have you noticed the market on the bonds of this

Railroad Company for the years 1930 to '33? A. I knew the market.

Q. 24. What has it been? A. At par or better.

Q. 25. Can you tell us, sir, how the bonds happen to be selling at par on a road that is in receivership? A. That is because they are guaranteed by the Jersey Company.

Q. 26. Now, let me turn to the Railway Company. What is your position in that concern? A. I am secretary and treasurer.

Q. 27. That also is a lessor? A. That is correct.

Q. 28. Take the years 1930 to 1933, if you will, and tell us what your duties were in connection with the Railway Company. A. Well, I collected the rent.

Q. 29. From whom do you collect it, sir? A. From the New York Central.

Q. 30. How often does it come in? A. Generally quarterly.

Q. 31. Do the checks come to you? A. Yes, sir.

Q. 32. When they reach you what do you do with them? A. I deposit them in the bank account.

Q. 33. And in what way do you disburse those funds? A. The funds are all disbursed for dividends except an amount of expenses and some cash left in the bank.

Q. 34. And under whose instructions are they disbursed as dividends? A. They are disbursed as dividends under the instructions of the Maine Company.

Q. 35. You spoke of depositing funds. Who selects the banks in which you make your deposits? A. That is selected by the Maine Company also.

Q. 36. Is there anything else that the Railway Company does, Mr. Austin? A. Well, yes, they make the lessors' Interstate Commerce reports.

Q. 37. Now let me ask you this, Mr. Austin: Take the years 1930 to 1933. What would have been the situation of

the Railway Company if the New York Central lease had been voided or in some way came to an end? A. Well, the railroad would have to have been operated, or at least until we could have found a new lessee.

Q. 38. Does the Railway Company have any equipment? A. None at all.

Q. 39. In the years 1930 to 1933 did it have any funds with which it could buy equipment? A. Well, not sufficient to run a railway.

Q. 40. Could the Railway Company borrow funds in those years? A. No, they couldn't.

Q. 41. Why do you say that, sir?

Mr. Clark: Just a moment, Your Honor. It seems to me this is all immaterial because the company is under lease and has been. I don't know whether Your Honor would feel that it might have any bearing on the issue, but it seems to me it is wholly immaterial.

The Member: Of course the hypothesis as to what it would do under assumed circumstances is of very slight consequence, but as to whether it does have equipment and whether it has facilities with which it could operate, those are factual and they seem to me to be not objectionable.

Mr. Clark: That is true.

The Member: These hypothetical questions, if they were to go to any substantial extent I would stop them, but if they don't I will let them go along.

Mr. Welch: I have practically finished.

Q. 42. (By Mr. Welch). You stated, I think, a moment ago that the Railway Company could not borrow money. A. That is correct.

Q. 43. Can you tell why that is? A. Within the mortgage of the Jersey Company there is a covenant forbidding it to borrow money on it.

Mr. Welch: I would like to call Your Honor's attention

on page 13 of the Jersey Company's mortgage, which is S 24, there is a covenant by which the Jersey Company covenants that the Railroad shall never borrow money.

Mr. Clark: Of course that depends entirely on the wording of the document itself.

Mr. Welch: I am only calling His Honor's attention to the fact, whatever it is worth.

Q. 44. (By Mr. Welch). If, Mr. Austin, any need for money on the part of the Railway Company should arise, what, if anything, could you do about it? A. We could do nothing but request it of the Maine Company treasurer.

Mr. Welch: Mr. Clark, at this time I should like to offer these two (handing documents to Mr. Clark).

Mr. Clark: I would like to ask, Your Honor, the purpose.

The Member: There has been nothing stated of record of what has been going on, at all.

Mr. Welch: I thought and still think Mr. Clark will agree to it. These are decisions of the Interstate Commerce Commission having some bearing on this New York Central lease and I thought it would be a convenience for later arguments about them, if they were put in evidence. There is to be no—

The Member: There was a time when the record was suspended when you gentlemen did some conferring and I don't want any loose ends.

If you are resuming the record, let us have some offer or statement to which this conversation can be directed.

Mr. Welch: I offer in evidence decision of the Interstate Commerce Commission in the Chicago Junction case, Finance Docket No. 1165; application of the New York Central Railroad Company for approval of purchase of stock, lease of property and option to purchase stock on property. Decided May 16, 1922.

The Member: Have you the citation? It probably appears at the bottom of the page.

Mr. Green: 71 I. C. C. 631.

The Member: Is there any objection to that, Mr. Clark?

Mr. Clark: All I would like to do is to ask the purpose so that we may have it as a matter of record.

Mr. Welch: The purpose of offering this docket is, it is a decision affecting the New York Central lease and on this decision there will be argument, perhaps orally, and certainly in the brief.

Mr. Clark: I have no objection.

The Member: It is received.

(The document so offered and received in evidence, was marked "Petitioner's Exhibit 13," and made a part of this record.)

Mr. Welch: And, similarly, I offer in the same docket No. 1165, Chicago Junction case, a decision of the Interstate Commerce Commission, dated December 3, 1928, and Mr. Green will furnish the citation.

Mr. Green: 150 I. C. C. 32.

The Member: Any objection?

Mr. Clark: No objection.

(The document so offered and received in evidence was "Petitioner's Exhibit 14," and made a part of this record.)

Mr. Welch: You may examine, if you wish.

Cross-Examination.

X-Q. 45. (By Mr. Clark). You stated that dividends of the Railway Company were disbursed only on authority of the Maine Company? A. Yes, sir.

X-Q. 46. How was that authority received by Railway? A. Through the president.

X-Q. 47. Well, was there any written authority; any written instruction, anything of that sort? A. I have not seen the written instruction; no, sir.

X-Q. 48. You don't know of anything? A. I don't know of any written instructions; no, sir.

X-Q. 49. Were there any verbal instructions? A. Yes, sir.

X-Q. 50. By whom? A. Through the president.

X-Q. 51. I say, by whom? A. By F. H. Prince.

X-Q. 52. To whom did he give those verbal instructions? A. To Mr. Leonard.

X-Q. 53. How do you know? Were you present at the conversations? A. No; I have heard the matter discussed many times.

Mr. Clark: Well, then, I ask the evidence be stricken, Your Honor.

The Member: I will take into consideration the fact it is entirely hearsay.

Mr. Clark: Very well.

The Member: I don't suppose I could do that, very safely. I could strike and take into consideration all these cross-examination answers; I take it that is really not what you meant, is it? You want to strike the direct examination answers to which your cross-examination refers and I can't identify those answers.

Mr. Clark: I think you are quite correct and I am very sure Your Honor will take into account the effect of the cross-examination relative to that direct testimony.

The Member: That doesn't affect the fact, of course, that the dividends were declared and paid, which, after all, is the crucial fact. The instance at which that was done, is only what appears on cross-examination through this witness' hearsay testimony. That is as far as it goes.

X-Q. 54. (By Mr. Clark). Referring to Railroad Company, Mr. Austin; is the receiver under obligation to pay the rental?

Mr. Welch: Just a moment. I suppose that would be a legal question. I don't, myself, know the answer.

The Member: Yes.

X Q. 55. (By Mr. Clark). Let me ask, then, whether the rental was treated as an accrual by the receiver, if you know? A. I don't know how they treat their rental.

Mr. Clark: No further questions.

Mr. Welch: Nothing further, Mr. Austin.

The Member: May step down. (Witness excused.)

Mr. Welch: Mr. Hackett.

MR. RICHARD HACKETT.

called as a witness by and on behalf of the Petitioner, and, having been first duly sworn, was examined and testified as follows:

Direct Examination.

Q. 1. (By Mr. Welch). What is your full name, Mr. Hackett? A. Richard Hackett.

Q. 2. You were sworn just now? A. Yes, sir.

Q. 3. Where do you live, Mr. Hackett? A. Drake Hotel, Chicago, Ill.

Q. 4. What do you do? A. I am general manager of the Central Manufacturing District.

Q. 5. Are you connected with any of the other corporations that are in this whole enterprise? A. I am traffic manager of the Union Stock Yards and Transit Company. I am a director of the Chicago Junction Railway Company.

Q. 6. When did you become associated with the Central Manufacturing District? A. December 1, 1927.

Q. 7. What had you done prior to that, sir? A. Prior to that I was western traffic manager of the New Haven Railroad in Chicago.

I came to Chicago in 1924. Prior to that I was assistant

vice president in charge of traffic at New Haven, Conn. I was with the New Haven Railroad about 28 years.

Q. 8. And I take it your life has been chiefly that of a railroad man. *A.* Yes, sir.

Q. 9. Did that fact have any bearing on your going to the Central Manufacturing District? *A.* My railroad experience was an important element in my equipment for the work that I now do.

Q. 10. Why was that so, Mr. Hackett? *A.* Because it calls for considerable contact with railroad representatives.

Q. 11. Now, what are your duties in Central Manufacturing District? *A.* I have entire charge of the actual operation of the property.

Q. 12. And what are those operations, Mr. Hackett? *A.* Well, we sell or lease land for use by industries requiring side-track connection, direct side-track connection for the handling of freight by rail.

We furnish the money and erect buildings to suit the needs, the requirements of the business concern and lease them or sell them on a 15-year basis.

We manage all the real estate owned by us.

Q. 13. When you sell or lease vacant land do you impose any requirement on the purchaser or lessee? *A.* Yes, sir.

Q. 14. What requirement? *A.* Always that the purchaser will erect a building.

Q. 15. Why do you make that requirement? *A.* One of the principal objects of the development of the Central Manufacturing District has been to build up the tonnage of the Chicago Junction Railway. As a result we are always anxious to obtain business concerns that will actually produce tonnage for that railroad.

Q. 16. Would you, Mr. Hackett, describe first a typical transaction where you sell some vacant land; and, let us say, you erect the building for the purchaser? *A.* When

a concern is looking for a site in Chicago, whether it is a concern in Chicago or from outside, we endeavor to interest them in the Central Manufacturing District and if successful we draw the plans to their specifications and send the plans out for bids.

We furnish the money for the erection of the building. When it is completed it is turned over to the purchaser and as soon as he takes possession, if it appears to be or happens to be a purchase contract, his interest payments and his amortization payments begin. They are usually on a 15-year basis with interest at 6 percent on the unpaid balance.

The payments are arranged either on a monthly basis, semi-annually, or annually, whichever suits the requirement of the industry.

We also erect buildings to specifications and lease them to industry on a 15-year basis.

Q. 17. When you build a building for a customer on what you call this 15-year period of amortization and interest, at the end of the 15 years who owns the building? *A.* The purchaser.

Q. 18. In the meantime, how about the taxes; who pays those? *A.* The purchaser pays taxes.

Q. 19. Mr. Hackett, I would like it if you would describe the Central Manufacturing District to us, if you will.

Perhaps His Honor would let you step over to the map, if you would like to. (The witness steps over to the map, as requested.)

Q. 20. And in your testimony, now, you are about to refer to Petitioner's Exhibit 3, are you not? *A.* Petitioner's Exhibit 3; yes, sir.

One of the important features of the development of the Central Manufacturing District has been the Chicago June-

tion Railway. You see it goes all through the district (indicating).

Each industry in the district has an individual side track and that side track leads out, as you will see here (indicating) into this net work of rails.

The result is that any industry in the district may load or can load at its loading platform a carload of freight and send it direct by rail to any point in the United States.

The district is bounded on the south by Thirty-ninth Street; on the east by South Morgan Street; on the north by Thirty-fifth Street, and on the west by South Ashland Avenue. That is the original Thirty-fifth Street district.

Q. 21. Roughly, what is the area of that original district? *A.* About 220 acres.

Q. 22. Now, there is another part of the district? *A.* Yes. We have over here (indicating) the so-called McKinley Park, or Thirty-ninth Street district.

Q. 23. When you say "over here"— *A.* That is, to the west and south of the original Thirty-fifth Street district.

Q. 24. And along what street, sir? *A.* Along Thirty-ninth Street, or Pershing Road.

Q. 25. And to the southerly side of it? *A.* Southerly side, yes, extends for a mile from South Ashland Avenue almost to Western Avenue and it contains about 92 acres.

You will notice that the lots in this district extend from Thirty-ninth Street back to the railroad with the result that each one of these lots is actually served on the rear by main-line track facilities into which these side-tracks load.

Q. 26. I think that will do, from the map, unless you have something else. *A.* That is all I have to suggest, Mr. Welch.

Q. 27. I did want to ask you something more from the map, Mr. Hackett, if you will come back, because I am not sure it has been testified to.

There is different coloring in the map in the area of the Central Manufacturing District. Will you tell us what the different colors represent? A. You will note—I don't know that His Honor can see it—that some of these portions are plain and others are sort of cross-hatched. The plain section represents the property which has been sold. The cross-hatched pieces show property that is still owned or leased by the District. We own it and it is not occupied, or we own it and it is leased, including, also, the private streets.

Q. 28. You own all the streets, do you, sir? A. We own all of the streets. They are all private streets, in our district.

Q. 29. Do you police them? A. We police them, maintain them, and repair them.

We also own the utilities, sewers, water mains, and electric lights.

Q. 30. Thank you, sir. I think you can go back to the stand. (The witness resumed the witness stand.)

Q. 31. You spoke of the district line on the southerly side of West Pershing Road as having been acquired somewhat later than what you called the original district, chiefly lying to the north of the stock yards itself. A. Yes, sir.

Q. 32. When was that portion of the district to the west and lying southerly from West Pershing Road acquired? A. In the year 1916.

Q. 33. And I take it from the map that that is also being developed? A. That is being developed; yes, sir.

Q. 34. And has been, already? A. It has been. There is still some vacant land to be sold or leased.

Q. 35. Now, would you take a moment or two, Mr. Hackett, and tell us what type of industry you find in the district? A. Only the highest type of light manufacturing or ware-

house activity. We don't take heavy-duty industries into the district.

Q. 36. Could you give us the names of some concerns that we might recognize that are located in the business? *A.* William Wrigley, Jr., the chewing gum manufacturer, is one.

Westinghouse Electric Manufacturing Company is another.

The Continental Can.

The United Drug.

The Great Atlantic & Pacific Tea Company.

The United Government Warehouses that serve the Sixth Corps Area.

The Goldblatt Brothers. They are not nationally known but are one of our biggest tenants, one of the biggest department stores in Chicago.

The Standard Sanitary Manufacturing Company, which is a subsidiary to the American Radiator.

Loose-Wiles Biscuit Company.

Standard Brands, formerly the Maxwell House Coffee, and a number of others.

Q. 37. I think you mentioned some United States Government building or set of buildings, didn't you, Mr. Hackett? *A.* Yes, sir.

Q. 38. Tell us about that, if you will. *A.* That is what they call the warehouse for the Sixth Corps Area. It supplies the War Department needs to its various posts in Illinois, Wisconsin, and Michigan.

Q. 39. And does that lie, Mr. Hackett, along the southerly side of Pershing Road? *A.* Yes, sir.

Q. 40. At that portion of the map where "district" appears? *A.* That is right.

Q. 41. About, roughly, what is the frontage of those

buildings on the street, if you recall? A. I would say, roughly, about 600 feet. I am guessing.

Q. 42. Do you know why that location was selected for the army corps? A. It was selected after a very exhaustive investigation by the War Department for the purpose of finding property so located that it could give the best possible service either in time of peace or in time of war to the Sixth Corps Area.

Q. 43. Mr. Hackett, have you at my request prepared a little folder of pictures of some of the buildings in the area? A. Yes, sir.

Mr. Welch: These are quite reduced in number and I don't expect but a few moments of testimony about them, but if there is no objection I should like to offer them and have him tell us about them.

Mr. Clark: No objection.

The Member: You are offering the whole book?

Mr. Welch: The whole book.

The Member: It may be received.

(The book so offered and received in evidence was marked "Petitioner's Exhibit 15," and made a part of this record.)

Q. 44. (By Mr. Welch). Mr. Hackett, referring to Petitioner's Exhibit 15, which is a folder of pictures, will you hold those so that His Honor can see them, if he has any interest in them, and then run through rather quickly, just telling us what they are. A. No. 1 is the Jewel Tea Company. They are a chain store organization.

No. 2 is the United States Cold Storage Corporation. That is one of the largest cold storage plants in the country.

No. 3 is William Wrigley, Jr., looking at it from the southeast to the northwest.

No. 4 is the Standard Brands, formerly Maxwell House Coffee.

No. 5 is the

The Member: Do you mean that, Standard Brands, formerly Maxwell House Coffee?

The Witness: Yes; Standard Brands bought it from Maxwell House Coffee.

The Member: I thought General Foods bought Maxwell House.

The Witness: No, I am quite sure—

The Member: Maybe I am wrong.

The Witness: The building is labeled "Maxwell House Coffee" and I think—

The Member: That is enough.

A. (Continuing) The No. 5 is the Republic Food Products Company.

No. 6 is the Continental Can, the old building that we built for them and they purchased 3 years ago, plus their addition.

No. 7 is the Loose-Wiles Biscuit Company. We erected that building and they leased it for 25 years and then later bought it.

The next one is the Goodyear Tire & Rubber Company building.

Q. 45. (By Mr. Welch). Instead of "the next one," give us the number for the record, if you will. A. No. 8. Pardon me.

No. 9 is our power plant on Thirty-ninth Street which serves all of the buildings in that district with steam and electric current and sprinkling service.

No. 10 is the Walgreen Drug Company's building, over 300,000 square feet. We built and leased it to them.

No. 11 is the Westinghouse Electric Manufacturing Company's building on Pershing Road.

The Member: Why do you call that "light manufacturing"?

The Witness: Well, that is only used, Your Honor, for

repairing the parts. The reason we don't want to have the heavy industries is because they have a nuisance value for a biscuit company or a food concern.

This next building, No. 12, is the Albert Pick Building. We erected that recently, about two or three years ago.

This, Your Honor, is three units of the United States Government warehouses.

Q. 46. And by "this" you mean number— *A.* No. 13. I am sorry.

No. 14 shows part of the tracks leading into the Central Storage and Forwarding Company's buildings, which are here (indicating). On the ground floor of that building is the less-than-carload freight station for the Chicago Junction Railroad. These tracks also carry along to the east of and serve the United States Government warehouses.

The Member: Give me the directions.

The Witness: This, sir, is looking from west to east (indicating), slightly northeast.

A. (Continuing) No. 15 is a view looking from the south to the north towards the Central Storage & Forwarding Company's buildings and United States Government warehouses over there (indicating). It shows a continuation of those tracks plus the make-up yard and holding yard known as the Ashland Avenue yard.

No. 16 is not very good, but that is a view of those same tracks, looking from the east or southeast to the northwest. There are the warehouses, the Central Storage warehouse, and the Government warehouses in here (indicating). It gives some idea of the network of tracks we have to serve industries in the district.

Q. 47. Mr. Hackett, I am not sure whether I asked you, but if I did, I will ask it over again.

Did you build the buildings for the Government? *A.* Yes.

sir; we erected 1,890,000 square feet in three units for the Government.

Q. 48. And were they purchased by the Government? *A.* They were purchased by the Government.

Q. 49. Mr. Hackett, roughly, how many people work within the limits of the district? *A.* Well, I don't know exactly, but the last rough check we made we figured somewhere in the neighborhood of thirty to thirty-one thousand people.

Q. 50. Would that be fairly accurate for the years 1930 to 1933? *A.* It would be probably somewhat less, but not very much less.

The Member: Which would be less?

The Witness: I mean, there would be fewer people.

The Member: This figure that you have given is for a period after that?

The Witness: The figure I gave was for the period I understood you to say before that.

Q. 51. (By Mr. Welch) Well, your rough count was for what year? *A.* Well, it was about '28 or '29, thirty to thirty-one thousand people.

Q. 52. And you think the years '30 to '33 would be somewhat less than — *A.* But not greatly less.

Q. 53. — than '28 or '29.

Is there anything else about the district, Mr. Hackett, that you would like to tell us as to how it is run and what it is? *A.* Well, the district is very much like a city within a city. We have our own banks in the district. I don't mean that we own the banks but they are there. We have our own association of business men similar to the associations or chambers of commerce. We have our own magazine, which is devoted to the interests of the tenants in the district. We are served by the Produce Terminal Company with power and light and are the only district in Chi

cago independently served. The rest of Chicago is served by the Commonwealth Edison Company. We have constructed and maintain our own sewers and water mains. We maintain police, our own private police. In fact, the general manager of the Central Manufacturing District is very much like the unofficial mayor. All of the tenants in the district come to us with their troubles, whether it is taxes or what it may be, and we try very much to do what we can to help them out.

Q. 54. Well, how, if at all, is this district related to the stock yards enterprise, Mr. Hackett? *A.* It is most intimately related to the stock yards. The stock yards, Packingtown, so-called, and the District are where they are because of that net work of tracks I pointed out on the map. They bind each one to the other and the whole to the outside world. Once you have the stock yards served by the system of tracks like the Chicago Junction Railroad, it is, in my judgment, inevitable that you should have the packing houses—Packingtown right next door to it, and inevitable that you should have the Central Manufacturing District all served by the same network of rails.

Q. 54½. Could you give us some idea, Mr. Hackett, of the extent of the trackage that appears on this Exhibit 3? *A.* There is about 21 miles of what we call main-line tracks that these locomotives run over, and about 167 miles of side tracks and holding tracks.

Q. 55. Now, I would like to go back to this army depot for a moment, if I may.

You said, I think, you built it and sold it to the Government for cash? *A.* Yes, sir.

Q. 56. So that you furnished the land and financed the construction and sold the completed building; is that right? *A.* We did.

Q. 57. Will you tell us approximately how much money was required? A. About $4,500,000.

Q. 58. Now, is that an experience that the District repeats from time to time, although perhaps on a smaller scale? A. Yes, sir.

Q. 59. Is it usual for you to build a building and be paid cash on the dot, as you were by the Government? A. No, sir.

Q. 60. What is the usual system? A. One-sixth or one-third of the cost of the land and improvements down, and the rest of it over a period of 15 years.

Q. 61. Now, let's go back, if you will, and assume we are in the year 1933, and that somebody comes to you and wants to buy a piece of property, and, let's to say, wants to put up a million dollar building on it. Will you tell us how you would have gone about it? A. Well, we would agree on the plans, draw them up and agree on the plans. The first question that would arise would be the one of finance. You can't build these buildings without having the money to do it with.

Q. 62. Well, where would you get your money? A. You are speaking now of what period? 1933?

Q. 63. 1933. 1933 we would, if it was any sizeable amount, have to appeal to the Maine Company.

Q. 64. Why not to a bank? A. Well, we couldn't borrow from a bank on our property at that time, and I don't think we can now. We were covered, as you probably know, by a bond mortgage, and banks at that time, and I think now, are reluctant to loan money on second mortgage property. You can't carry on work of this kind, Mr. Welch, without being sure that you are going to have ample funds to take care of the needs of your prospective tenants.

The Member: We will suspend until quarter after two.

(Whereupon, at 12:45 o'clock p. m., the hearing in the above

entitled matter was recessed until 2 o'clock p. m. of the same day.)

AFTERNOON SESSION.

The Division resumed hearings at 2:15 o'clock p. m.; whereupon, the following proceedings were had:

MR. RICHARD HACKETT

having heretofore been first duly sworn, was recalled to the stand, and was examined and testified as follows:

Direct Examination (Continued)

Q. 65. (By Mr. Welch) You were saying something about getting financing; is that right? *A.* That is right. I answered that question.

Q. 66. Had I asked you why you couldn't borrow money from banks? *A.* That is right; you did.

Q. 67. You had answered that question? *A.* I answered that question; yes, sir.

Q. 68. When contracts are ready for execution, a contract that calls for the erection of a building, do you execute them? *A.* No, sir.

Q. 69. Who does? *A.* They are signed by two of the trustees of the Central Manufacturing District.

Q. 70. And those trustees once more are? *A.* Frederick H. Prince, Arthur G. Leonard, and J. A. McDonough.

Q. 71. After the plans are drawn and the contract is prepared and signed; or prior to signature, what would happen then? *A.* When I know that the concern really means business, I communicate either by telephone or by letter with Mr. Prince, if he is available; if not, I confer with Mr. McDonough.

Q. 72. And in what regard do you communicate or confer? *A.* About the name of—I give the name of the company; I give his financial standing; I give the type of structure he requires and the location, in which district it may be.

In fact, I give him a resume of the highlights of the whole thing; including the financial responsibility of the concern.

Q. 73. Then what happens? *A.* I either get permission to go ahead or if they don't like my prospect, or the type of building, they will turn me down. If I am permitted to go ahead, the money for the building is furnished by the Maine Company if we have insufficient funds in the District.

Q. 74. Now, is this type of thing, Mr. Hackett, the only interest the Maine Company was showing in your operation in the years '32, '33? *A.* Oh, no, there was nothing of any importance that transpired in the District that I did not confer with the Maine Company about, whether it was a lease, a purchase, contract, failure of a lessor, a failure of a purchaser to go through with his contract, taxes, tonnages; in fact, everything of any importance I felt obligated to go to the Maine Company for instructions.

Q. 75. Do you have any system of reports to the Maine Company? *A.* We have a monthly report, which is sent to the Maine Company.

Q. 76. I show you, sir, a paper booklet and ask you if that is a sample report for the month of December, 1933. *A.* '33; yes, sir; it is.

Mr. Welch: I offer this, Mr. Clark, if I may.

Mr. Clark: I would like to ask for what purpose this was prepared in the first instance?

Mr. Welch: It was prepared for the information and action of the Maine Company where required.

Mr. Clark: Well, is it prepared for any commission of the State of Illinois?

Mr. Welch: I regret to say that it is not, from your point of view.

Mr. Clark: Very well.

Is it prepared for any other commission?

Mr. Welch: It is prepared for no commission. It is prepared for the Maine Company.

Mr. Clark: I have no objection.

The Member: These dialogues are not evidence of record. If it is important that that should be made part of the facts, it should be either agreed upon by counsel or else elicited from the witness.

Mr. Clark: I won't agree to anything.

The Member: Well, I am only concerned with the importance of having the facts in the record if you want it. You have no objection to the exhibit as for whatever it is?

Mr. Clark: No.

The Member: It is received.

What number is it?

The Clerk: Petitioner's Exhibit No. 16.

(The paper booklet so offered and received in evidence was marked "Petitioner's Exhibit 16," and made a part of this record.)

Q. 77. (By Mr. Welch). Referring to Petitioner's Exhibit No. 16, Mr. Hackett, is that a sample of a report that was sent by the Central Manufacturing District to the Maine Company throughout the years 1930 to 1933? A. Yes, sir.

Q. 78. And how often, sir? A. Once a month.

Q. 79. Is that report required by any regulatory body of any sort whatever? A. None whatever.

Q. 80. May I ask you, Mr. Hackett, who selects your bank depositories? A. The Maine Company.

Q. 81. Was that true, the selection of the bank depositories, through the years 1930 to 1933, what you have just stated? A. Yes, sir.

Q. 82. Have you had any occasions when you made any suggestions to the Maine Company or submitted propositions to them, that have been turned down? A. Yes, sir.

Q. 83. Can you think of one or two such that you can tell us? *A.* Well, I had a prospect. There was a radio manufacturer who wanted about 200,000 square feet of building costing about $500,000. I recommended it to the Maine Company, and Mr. McDonough turned it down.

Q. 84. Can you think of anything else that has been turned down? *A.* Oh, I cannot, Mr. Welch. I am very careful not to put up anything that I am not fairly sure, very sure, that they will approve; otherwise, I know it will be turned down.

Q. 85. Will you tell us, if you will, Mr. Hackett, the extent of your contact with Mr. Prince when he is in this country, or Mr. McDonough, through the years 1930 to 1933? *A.* Well, Mr. Prince has me on the telephone when he is in this country sometimes three and four times a day, and every day in the week, including Sunday sometimes if things are important. He comes out to Chicago about five or six times a year and spends about a week at a time, and when he is here I see him every day, maybe two or three times a day.

Mr. McDonough I contact on the telephone maybe every day, maybe every other day, but he is in Chicago or tries to be about every other week, so I see him much more frequently.

Q. 86. Have there been any occasions, Mr. Hackett, when the Maine Company is assisted in meeting the obligations of the manufacturing district? *A.* There are three that I recollect.

Q. 87. Will you tell us those occasions one at a time? *A.* Well, there was one in 1933, when they met a maturity of the District.

Q. 88. By "maturity" you mean maturity of what? *A.* Maturity of our bonds.

Q. 89. Yes. *A.* I had previously said that we had a bond

issue on the District, and they met this maturity which was due in March of $225,000, and $50,000 in interest.

Q. 90. That is one occasion, then. Can you think of another? *A.* In 1932, as I remember it, they met a maturity under our bond issue of $225,000. I think we took care of the interest ourselves.

And in 1930, we had a maturity coming due under the bond issue of about $800,000, which was also met by the Maine Company.

Q. 91. Do you know, Mr. Hackett, who made the decision as to whether these maturities should be met or the bonds refunded? *A.* That was made by the Maine Company.

Of course, under the bond issue certain maturities were required at a certain time.

Q. 92. Have you, Mr. Hackett, refreshed your recollection as to your cash in 1930 to 1933, and if you haven't can you do so from the documents on file here? I will show you the stipulation in a moment, if I may.

If you will be good enough to look at that for a moment and I will direct some questions to it.

Taking the years 1930 to 1933 and refreshing your recollection from S—

Do you see the number on the tabulation, on the tab? *A.* Yes; 30 and 33.

Q. 93. Will you tell us what was the maximum expenditure that the Central Manufacturing District by itself was in a position to undertake, let us say, for the construction of a building, any time during those years? *A.* They were not able during those years to enter into a contract of any sizeable sum. I mean by that, over a hundred or two hundred thousand dollars, without the assistance from the Maine Company.

Mr. Clark: May I ask the Reporter to read the question and answer, if you please?

(Question and answer read.)

Mr. Welch: If Your Honor please, I am under the impression that the witness referred to S-30 and S-33 when he should have, I think, referred to S-35.

Q. 94. (By Mr. Welch). And you are speaking, now, of the years 1930 to 1933 toward the end of those statements, are you not, Mr. Hackett? *A.* I wish to state that again, Mr. Welch. I am not following your question.

Mr. Welch: Strike it out. I think it is of no importance. I simply wanted to help His Honor in finding the page you are referring to, and I think he has found it.

Q. 95. (By Mr. Welch). Well, would it follow from what you have said that there was no construction during those years? *A.* Oh, no, we went right ahead and constructed buildings during those years.

Q. 96. Can you think of one of any substantial size? *A.* We signed a contract in October or November, 1932, for a building costing about $700,000.

Q. 97. Where did you get the money for that? *A.* I think we furnished three or four hundred thousand and obtained the rest from the Maine Company.

Q. 98. If you will look at S-35, which you have before you — *A.* Is S-35 this whole book?

Q. 99. No, S-35 is a little tab, and it is now on your left hand side. *A.* Yes, I have it.

Q. 100. And will you look at your statements for the years 1930 and 1933 and tell me if I am correct in saying that in each of those years you had around a million and a half to something approaching two millions in accounts and notes receivable? *A.* That is correct.

Q. 101. Couldn't you rely on those assets to produce cash to use in the construction of a building? *A.* No, Mr. Welch. Those represent purchase contracts payable over a period of years.

Q. 102. If you will look at December 31, 1933, do you see an item of subordinated funds. A. Yes.

Q. 103. What is the amount of it? A. Six hundred thousand dollars.

Q. 104. What does that item represent? A. That is money that Central Manufacturing District had on deposit in the predecessor bank to the Live Stock National Bank.

Q. 105. What had happened to that bank? A. The bank was closed by the moratorium and was not permitted to open until certain moneys were subordinated by the District and the yards and associated companies.

Q. 106. Could you, in that year, 1933, secure any of this subordinated deposit? A. No, sir.

Q. 107. Did you at that time have any anticipation that you would be able to withdraw any of those funds at any time in the reasonably near future? A. No, sir.

Q. 108. Have you been able to yet? A. No, sir.

Q. 109. Now, will you look at an item called "Unadjusted Debits for 1930, 1931, 1932, and 1933"? Do you find that item? A. Yes, sir.

Q. 110. Will you give us the amounts for the year beginning 1930 and running through 1933. A. The amount of unadjusted deposits in 1930 was $314,657.98 and for 1931, $281,726.05.

Q. 111. 1932, please? A. $744,581.68.

Q. 112. 1933, sir? A. $641,478.51.

Q. 113. What do those items represent? A. They represent real estate that is held outside our mortgage. It is real estate that we have acquired and it is very slow-moving, even for industrial real estate.

Q. 114. Now, again speaking of 1933, what were you then looking forward to in the way of needs for money? A. Well, had the feeling that about 1933 prosperity was around the corner. Most industrial building had stopped

from 1929 on to 1933, and we who were in the business looked for somewhat of a boom in 1933 and for the next few years to come.

Q. 115. When you had that in mind what resources were available to you if that demand for building rose? A. Practically none.

Q. 116. Was there anywhere you could turn, if you needed it? A. We would have to turn to the Maine Company.

Q. 117. Did you form a judgment in 1933, Mr. Hackett, as to your probable requirements for, say, the next 3 years? A. I did, sir.

Q. 118. What judgment did you then form? A. I figured we would need from one to five million dollars.

Q. 119. Did you at that time have a conversation with Mr. Prince about that matter? A. Yes.

Q. 120. Will you tell us in substance what was said by you and by him? A. When I informed Mr. Prince of what I thought our requirements would be for the next one to three years and that was from one million to five million, he said that he would do everything he could to furnish the necessary money to the District as he was quite anxious to continue to develop industries that would furnish tonnage for the Railway, but he said, "Mr. Hackett, the Maine Company has a very heavy debt coming due in 1940 which we have to meet, and I may not be able to do all that I want to do, but I will find some way to take care of the situation if I can so that the District won't be hurt by letting any good tonnage producing industry get away."

That is in substance as I remember what he said.

Q. 121. You testified, I think, that you are a director of the Railway Company? A. Yes, sir.

Q. 122. As such, are you aware of the lease of the Railway to the New York Central? A. Yes, sir.

Q. 123. And the rental is what? A. Two million dollars a year.

Q. 124. Has that lease ever been a subject of discussion between you and Mr. Prince? A. Many times.

Q. 125. Was it discussed by you and by him in the years 1932 or 1933? A. Yes, sir.

Q. 126. Taking your discussion, let us say in the year 1932, will you tell us the substance of what was said by you to Mr. Prince about that lease, and what was said by him? A. I had, of course, told Mr. Prince that I thought the District had done a very good job in building up the tonnage for the railroad, and that there was a very heavy tonnage of freight moving in and out of the District every day, and Mr. Prince said he knew that was so, but he thought there was much more that we should do.

He and I both felt a lack of confidence in the railroad situation at that time. We had studied it a great deal, and Mr. Prince, himself, stated that he was not at all sure that a receivership of the New York Central Railroad property was not in the wind.

He said, "If that happens we are much better off if we have built up the tonnage for the railroad."

I told Mr. Prince that he was right, of course, about the railroad situation, about the New York Central; that I felt if we had Government ownership, which was being seriously discussed at that time, that I doubted that even the building up of the tonnage would protect the Chicago Junction.

He stated he thought that was probably true.

The situation was very bad and drastic steps would have to be taken but, short of Government ownership, he felt the protection of the Chicago Junction Railroad lay on continually building up the tonnage of that railroad.

Q. 127. Just one other thing, Mr. Hackett: From your

experience as manager of the Central Manufacturing District, will you tell us, please, what your ordinary and reasonable needs for working capital are? A. Well, Mr. Welch, that is a pretty difficult statement. For running the District alone the operations of the District, taking care of taxes and things of that sort, I would say we need somewhere around a half million dollars, but, as I think you may know, and if you don't I will be glad to tell you, we can't wait to find out whether we are going to have money. We are got to know we are going to have money.

Competition for the industry is very keen and the District should have either in its own till or in the till of the Maine Company ample funds to take care of any industry that offers itself to u , whether it is five million, a million, or four million dollars. If it is a tonnage producing industry of the type we want, we ought to be able to take it.

That is our problem.

Mr. Welch: You may inquire.

Cross-Examination.

X-Q. 128. (By Mr. Clark). You testified, Mr. Hackett, this morning that if you had to have help for erecting these buildings, you would have to turn to the Maine Company? A. Yes, sir.

X-Q. 129. Did you turn to the Maine Company at any time? A. Oh, yes, sir.

X-Q. 130. Did you turn to Mr. Prince? A. Oh, yes, sir, if he was in this country.

X-Q. 131. Yes. Any reason why you shouldn't have turned to Mr. Prince in any event? A. Any reason why I should not?

X-Q. 132. Yes. A. No, no reason.

X-Q. 133. That is, no necessity to turn to the Maine Com

pany in the event Mr. Prince were here? A. Well, I don't distinguish, Mr.—

X-Q. 134. Well, no. Just answer me that. A. May I ask for the question again, please?

Mr. Clark: The Reporter.

(Question read.) A. No.

X-Q. 135. (By Mr. Clark). Relative to these subordinated funds about which you have testified, Mr. Hackett, did you hear the testimony of Mr.—I have forgotten his name—this morning? A. Mr. Henkle?

X-Q. 136. Yes. A. Yes, I did.

X-Q. 137. Yes, Mr. Henkle.

Is there any difference in regard to the character of these subordinate funds about which you have testified which differentiates them from those to which he testified this morning? A. I don't think so.

X-Q. 138. During this period of time, 1930 to 1933, wasn't the District paying dividends? A. No, sir.

X-Q. 139. It was not? A. No, sir.

X-Q. 140. Did it ever pay a dividend? A. Not to my knowledge.

X-Q. 141. Relative to Petitioner's Exhibit 16, reports which you have testified, I believe, were sent regularly to the Maine Company—do you recall that? A. Yes, sir.

X-Q. 142. Weren't those reports sent also to the New Jersey Company? A. I never sent anything to the New Jersey Company.

X-Q. 143. Well, do you know whether they were sent to the New Jersey Company? A. They were addressed to the Maine Company, not to the New Jersey Company, so far as I know.

X-Q. 144. Do you know that they were addressed to the Maine Company? A. Well, it is a fine point, Mr. Clark. I

can't say what was actually on the envelope, but the intention

X Q. 145. No, no, I quite appreciate that. *A.* But the intention, I believe, was to address them to the officers of the Maine Company.

X Q. 146. Were you responsible for having them so addressed? *A.* No, sir. No, sir.

X Q. 147. You were not? *A.* No.

X Q. 148. Did you send any of those reports to Mr. Prince individually? *A.* No, sir.

X Q. 149. Or to F. H. Prince & Company, Inc.? *A.* No, sir.

X Q. 150. Why was that not so? They were stockholders, weren't they? Well, I should say certificate holders, because it is a trust? *A.* Well, all of my correspondence and all of my requests, even the letters I addressed to Mr. Prince, are addressed care of Mr. J. A. McDonough, at the office.

The Member: Well, are you the one, generally speaking, who is responsible for having these reports sent? *A.* No, sir.

X Q. 151. Who is? *A.* Well, I would say that the orders came from on top and they were actually sent by the accounting department direct.

X Q. 152. Without your supervision? *A.* Yes, sir.

X Q. 153. And so they are the people who would know to whom these reports are sent? *A.* I would think so, Your Honor. I am not sure, though.

Mr. Clark: That is all, I guess.

The Member: Wait just a moment.

The Witness: Excuse me.

The Member: I want to inquire here.

Q. 154. (By the Member). Looking at this balance sheet

here of your books which you have already referred to as being S-34 — A. Yes, sir.

Q. 155. — Mr. Welch has asked you about the item called "Accounts and Notes Receivable." A. Yes, sir.

Q. 156. And you said that they represented the receivables, as I understand it, from the purchasers or lessees of the properties of the company, who, in turn, gave back these notes or in some way amortized the purchase price? A. Yes, sir.

Q. 157. That is what that "Notes Receivable" item means, doesn't it? A. Yes, sir.

Q. 158. Now, does that mean, then, that the real estate which you sold or contracted to sell to the lessee or purchaser, speaking loosely, was taken out of your books so that the asset represented by the real estate was no longer there but was now in the form of these notes receivable? A. I would think that was the way it was done, Your Honor, but I don't know the mechanics of it.

Q. 159. You are not sufficiently familiar with your accounting system to know about that? A. No, sir; but that would be the way I would think it would be done.

Q. 160. Can you tell me, generally speaking, what the item called "Capital Assets," which is represented in the various years by eleven million, and fourteen million, and fifteen million, are? Can you tell in a general way what that is? A. That is everything that belongs to the District including what is left of these purchase contracts, streets, land that is undeveloped, anything that we have that was left that belonged to the District.

Q. 161. Well, now, that would indicate, I should think, that a piece of land would be found at its book value within the item called "Capital Assets," but that after you have contacted with an industry to put a building on the property and let them acquire it; that from that time that prop-

erty would be out of the capital assets account and put instead in the notes receivable account? A. That would be proper accounting for it.

Q. 162. Now, if that is so, how am I to understand your statement that the capital assets account represents to some extent some of these purchase contracts? A. I can't talk authoritatively on it, but I believe that is the fact, but I don't know. I am not familiar with this accounting in here. I don't know.

Q. 163. Well, is it fair to say that the item "Capital Assets," which seems to represent the largest item among your assets, does in fact represent to a very large extent the book value of the lands which are still owned and undisposed of? A. And buildings as well.

Q. 164. Together with buildings? A. Yes, sir; I would think so.

Q. 165. Have you any idea of how that would be? A. I haven't.

Q. 166. How you can divide that as between land and buildings. A. I wouldn't have, Your Honor.

Q. 167. Take a $14,000,000 figure, round figures as it appears at the end of 1930. A. I would have to see the detailed figures. These are just summaries.

The Member: All right. Anything further?

Mr. Welch: Just a moment, Mr. Hackett. I may want to ask you something, but I doubt it.

Mr. Clark: I haven't quite finished yet, Your Honor.

The Member: All right. You said you had and that is the reason I took this up.

Mr. Clark: Yes, I appreciate that.

The Member: All right.

X-Q. 168. (By Mr. Clark). You went out of the District and opened a new district called the Crawford District,

did you not? *A.* We have a management contract for developing that district.

X-Q. 169. When was that entered into? *A.* About '31, I think, or '32.

X-Q. 170. And why was that done? *A.* To give us an opportunity to build up tonnage for the railroad. Under the contract, if you would like to have me explain—under the contract, as we obtain a concern that is desirable, we buy the land from the New York Central and furnish the money for the improvements the same as we do in the Central Manufacturing District that we own and have to build, and the idea of that is to build up the tonnage for the railroad.

X-Q. 171. Where is the Crawford District located, if you can indicate on the map? *A.* The Crawford District is not shown on that map, but I have a smaller map, I think, where I could show it.

X-Q. 172. Well, could you tell me relatively how far it is from there? (The witness leaves the witness stand and indicates on the map:) *A.* This is Forty-seventh Street here (indicating).

X-Q. 173. Yes. *A.* Now, the Crawford District is about —Forty-seventh and Western—it is about a mile—it is about two miles west.

X-Q. 174. In which direction? *A.* West, this way (indicating), on Forty-seventh Street.

X-Q. 175. How large is this Crawford District? *A.* It is about 380 acres. It is about as large as our other districts put together.

The Member: Entirely south of Forty-seventh Street, is it?

The Witness: No, Your Honor, it is entirely north of Forty-seventh Street, and spans what is Crawford Avenue, a due north-and-south highway.

The Member: So that it is west of the southernmost part of the stock yards section?

The Witness: Yes, sir.

The Member: As shown by this map?

The Witness: Yes, sir.

The Member: And about 3 miles west; is that right?

The Witness: Yes, sir.

X-Q. 176. (By Mr. Clark). Now, does the railway serve that district? *A.* Yes, sir.

X-Q. 177. It does. In what way and to what extent? *A.* It is a belt railway, the same that serves this property in here (indicating), these tracks. A car comes in here to this Ashland Avenue yard for an industry over in the Crawford track, and is switched around here and around to the Crawford track. It is all tonnage over the railroad coming in and out.

X-Q. 178. Well, how much trackage is there in the Crawford District? *A.* Well—

X-Q. 179. As compared with— *A.* —oh, it is very small. We have only about five or six industries in the Crawford District.

X-Q. 180. Well, I want to know about the amount of trackage as compared with that here in what we call the District, the C. M. D. *A.* It is very small. We have one, two—two industries over there now. We are putting in two new ones, just started construction about a month ago.

You see, the contract was signed in '31, during the depression, and there hasn't been very much industrial building for the last eight or nine years.

X-Q. 181. Well, how much trackage is there as compared with what you have here? *A.* Do you mean actual tracks, side tracks?

X-Q. 182. Yes, if you can recall. *A.* I would say there would be approximately two miles of side tracks.

X-Q. 183. As compared with what? A. As compared with 166.

The Member: And no main tracks as compared with your 21 miles here?

The Witness: They have no running tracks there, Your Honor. They are just passing tracks, and we call those side tracks.

The Member: Are you through now, Mr. Clark?

Mr. Clark: Not quite yet, Your Honor.

The Member: All right.

Mr. Clark: If you will pardon me.

The Member: It is all right. Take all the time you need.

X-Q. 184. (By Mr. Clark). Now, let me ask you one more question, please. A. Yes, sir.

X-Q. 185. When the District needed money in prior years, that is, prior to '32, '33, didn't it borrow money in the open market? A. I don't think so, Mr. Clark.

X-Q. 186. Well, do you know? A. No, I do not, without refreshing my memory or looking it up; no, sir.

X-Q. 187. You had nothing to do with any such borrowing, then, in any event? A. Not before '30; no, sir.

X-Q. 188. Do you have S-35? A. Yes, sir.

X-Q. 189. Will you look at the balance sheet, please, and will you, refreshing your recollection from that or stating the contents thereof, say whether there isn't evidence of borrowed money? A. Will you state that question again, please?

Mr. Clark: The Reporter. (Question read.)

A. It show here notes payable. I assume that is borrowed money.

X-Q. 190. (By Mr. Clark). Anything else that would be evidence of borrowed money? A. I wouldn't think so. I don't know.

X-Q. 191. (By the Member). Well, you mean you don't

read this balance sheet as indicating borrowed money? A. No, sir.

X-Q. 192. Except in the item of notes payable? A. No, sir.

X-Q. 193. Do you know of any borrowed money other than that? A. No, sir.

X-Q. 194. Irrespective of the balance sheet? A. No, Your Honor.

X-Q. 195. (By Mr. Clark). How much is there under the item "Notes Payable"?

Mr. Welch: In what year, Mr. Clark?

Mr. Clark: I was directing attention to the years '30 to '33. A. Well, notes payable in '30 shows $200—$200,000. I beg your pardon.

X-Q. 196. (By Mr. Clark): I couldn't imagine $200 in this kind of a case.

And '32? A. And '32, $608,000.

X-Q. 197. And '33? A. $1,855,000.

Mr. Clark: That is all.

Mr. Welch: Just a moment, Mr. Hackett.

That is all, Mr. Hackett. (Witness excused.)

Mr. Welch: Mr. Reimers, please.

MR. DAVID H. REIMERS.

called as a witness by and on behalf of the Petitioner, and, having been first duly sworn, was examined and testified as follows:

Direct Examination.

Q. 1. (By Mr. Welch). What is your full name, please, sir? A. David H. Reimers.

Q. 2. Where do you live, Mr. Reimers? A. 93 Indian Hill Road, Winetka, Ill.

Q. 3. And you were sworn just now? A. Yes, sir.

Q. 4. What do you do? A. I am president of the Live Stock National Bank of Chicago.

Q. 5. Is that a bank in the stock yards district in Chicago? *A.* Yes, it is.

Q. 6. Will you tell me, sir, because I don't want to ask you to leave the stand, if I am now pointing to it on Exhibit 3 where there is the legend "Live Stock National Bank," and a line leading into a building? *A.* It is difficult for me to see from here, but the bank is at the main entrance of Union Stock Yards at Forty-seventh and Exchange Avenue.

Q. 7. How long have you been president of the bank? *A.* Since April of 1933.

Q. 8. Was that the date of its formation? *A.* That is right.

The Member: The main entrance is at what street?

The Witness: Halstead and Exchange Avenue.

The Member: Didn't I hear you say something about Forty-seventh Street?

The Witness: I meant to say Halstead.

The Member: Say it over again, where the bank is.

The Witness: The bank is at the main entrance to the Union Stock Yards, at Halstead Street and Exchange Avenue.

Q. 9. (By Mr. Welch). Would you tell us now, Mr. Reimers, how that bank came to be formed? *A.* The Live Stock National Bank is the outgrowth or is a take-over, I should say, of the Stock Yards Bank & Trust Company, which, in turn, had succeeded to the business of the Stock Yards National Bank and Stock Yards Trust & Savings Bank. The Stock Yards Trust & Savings Bank was an affiliate of the Stock Yards National Bank. Both of those banks did business in the same building.

Q. 10. Were they old, or was one of them old? *A.* Both of those banks, Mr. Welch, date back, oh, I think it is in June of 1868.

Q. 11. That bank was a State or national bank? *A.* Which one are you referring to? There was a Stock Yards National Bank.

Q. 12. That was, then, a national bank? *A.* That is right.

Q. 13. Let me see if I get this straight, for the record—and I am quite sure you won't mind my leading myself perhaps, as well as the witness—is it correct to say that prior to January of 1933 there was the Stock Yards Trust & Savings Bank and the Stock Yards National Bank and that their assets were consolidated; is that right? *A.* That is right.

Q. 14. And as their assets were consolidated, became the Stock Yards Bank & Trust Company? *A.* That is right.

Q. 15. Now, did that consolidation result from an examination that you had made? *A.* I had made the last national examination of the Stock Yards National Bank; that is correct.

Q. 16. What were you, then? *A.* I was a national bank examiner.

Q. 17. And you had examined what bank? *A.* The Stock Yards National Bank.

Q. 18. When was that, sir? *A.* In August or September, 1932.

Q. 19. Now taking that date when you made that examination, will you tell us what banks had been serving the stock yards district prior to that examination? *A.* There was the Stock Yards National Bank and, as I have said, its affiliate, the Stock Yards Trust & Savings Bank.

The Central Manufacturing District Bank and the Drovers National Bank.

Q. 20. Were all four of them open when you made that examination in 1932? *A.* They were all open and doing business except the Central Manufacturing District Bank which closed in July, I believe, of 1932.

Q. 21. As a consequence of your examination of the Stock Yards National Bank, did you make certain recommendations concerning it? A. I did.

Q. 22. What were the recommendations that you made? A. I made alternative recommendations, Mr. Welch.

Q. 23. What were they? A. One was along the lines of greatly strengthening the bank and permitting it to continue to do business as a national bank and a member of the Federal Reserve System, or the other was to give up its charter as a member of the Federal Reserve System and as a national bank.

Q. 24. Which alternative was adopted? A. The latter.

Q. 25. That is, it gave up its charter? A. It did.

Q. 26. And ceased to be a member of the Federal Reserve? A. That is right.

Q. 27. What happened when it gave up its federal charter? A. The assets of the Stock Yards National Bank and the Stock Yards Trust & Savings Bank, its affiliate, were merged under a State charter, called the Stock Yards Bank & Trust Company, and that actually took effect on, I think, January 10, 1933.

Q. 28. What part, if any, did the Transit Company play in that reorganization? A. The Transit Company at the time put in a million dollars of Government bonds.

There was some accrued interest bringing that up a little beyond a million dollars, which, in effect, was a contribution because within 3 months it was lost.

Q. 29. That happened when? When was the Transit contribution made? A. On the same day that the State Bank charter became effective.

Q. 30. And that was when? A. January 10, as I recall, 1933.

Q. 31. And then the State bank called the Stock Yards

Bank & Trust Company began to function; is that correct? A. That is correct.

Q. 32. At the time the Transit Company put the million dollars in Government bonds in, was something done about the capital structure of the bank? A. You mean, Mr. Welch, the newly organized bank? The Stock Yards Bank & Trust Company?

Q. 33. Yes. A. Yes, there was.

Q. 34. What was done? A. The old bank had a capital made up of 100,000 shares, the par of each was a hundred dollars a share. That number of shares was reduced to 10,000 shares having a parred-up value of $20 a share. The total number of shares then were increased to 50,000 shares by selling 40,000 shares, and those shares were sold, as I recall it, at $37.50 per share.

Q. 35. Who took the 40,000 shares? A. Those shares, the 40,000 shares, were subscribed and paid for by Western Associates.

Q. 36. A subsidiary of what company? A. Of the Maine Company.

Mr. Welch: That, if Your Honor please, is the Western Associates, Inc., which appears on the family tree, which is Exhibit 1 (indicating).

Q. 37. (By Mr. Welch). Now, after the formation of this new State bank, and after the subscription to stock of one million five, and the million dollars had been put in by the Transit Company, did someone approach you about becoming connected with it? A. Yes, they did.

Q. 38. Who did? A. I received a telephone call from Mr. Traylor, the president of the First National Bank.

Q. 39. You don't need to tell us what he said. And about when was that? A. In the forepart of January, 1933.

Q. 40. And as a consequence of that, did you have a conversation with him? A. Yes, I did.

Q. 41. And, in turn, as a consequence of that conversa-

tion, did you talk to someone else? A. Yes, I talked with Mr. Arthur G. Leonard at his office at the Union Stock Yards.

Also Mr. Howard M. Simms, manager of the Chicago Clearing House Association.

Q. 42. Did you talk with anyone else? A. Yes, as I recall, I talked with Mr. McDonough and Mr. Prince; both.

Q. 43. How did you talk to Mr. Prince; in person or on the telephone? A. On the telephone.

Q. 44. Will you tell us the substance of that conversation with Mr. Prince? A. Mr. Welch, I was a little bit undecided about accepting a position at the bank; and I called him to inquire.

Q. 45. Well, will you tell us the substance? A. I told him I had been approached on the matter of accepting the presidency of the bank and I was hesitating.

Q. 46. What did he say to that? A. I first told him why I was hesitating. I told him I didn't think the set-up was sound and in very few words he told me not to worry about that, that he would be out in a very few days and see me.

Q. 47. Did he come out later? A. Yes, he did.

Q. 48. About how soon? A. In the next few days, possibly a week, ten days.

Q. 49. Did you meet him? A. Yes, I did.

Q. 50. Where? A. I had lunch with him at the Saddle and Sirloin Club in the Union Stock Yards.

Q. 51. Was anyone else present with you? A. Yes, Mr. Leonard was present first, and we chatted a while, and he left us.

Q. 52. Will you tell us the substance of what was said by Mr. Prince and you, on this occasion? A. We visited for a while and he discussed the various properties there in the enterprise, asking if I was familiar wth them, and I told him, "Not to any great extent," and I think he asked

something about my own experience, and so forth, and I told him I didn't think I would be with the bank very well.

He asked me why and I told him again I didn't think the set-up was sound and that he may have been under the impression that the amount of money that his companies had poured in there was sufficient to see his bank in a satisfactory condition, but I didn't think so.

Q. 53. What did he say to that? *A.* He asked me how much, in my opinion, would be necessary to effect a satisfactory condition, and I told him I thought it would take another $5,000,000.

Q. 54. What did Mr. Prince say then? *A.* He said plenty.

Q. 55. I didn't ask you how much he said, but what did he say? *A.* He said, "My God, Reimers, you don't mean that."

I said, "Yes, I do, Mr. Prince." I said, "I have been through the set-up very thoroughly and I think that my figures are correct."

I told him that it was his problem but that I didn't think he could afford to let the bank fail.

I told him or reminded him that his own companies had approximately $4,000,000 on deposit there; that in the event of a failure of the bank that, in my judgment, he couldn't expect to receive more than 25 or perhaps 30 cents on the dollar on the receivership; that he would lose his investment in the bank stock, and, in addition, pay an assessment.

Q. 56. Did you say anything else? *A.* I also told him, which I don't think was necessary—he seemed well aware of the fact in our discussion of it—that the bank in the country and I knew that of my own knowledge because I had examined throughout the Federal Reserve District for approximately four years, that it was regarded as one of the oldest banks in Chicago, which it was, and was generally known throughout the country as a yards bank, not

as a privately owned bank; that it was just a part of the stock yards; that there were a great many, I think there was something like 400,500 bank accounts carried in the Stock Yards National Bank. That was exclusive, entirely, of the number of remittances, collections that were made through the bank that went to all parts of the country, and if the word should go out that this bank had failed, that it would have a tremendous effect without any question upon shipments into the yards.

Moreover, there were something over 65, 70, perhaps 75 commission firms that banked in that bank, and that those people, in fairness to their customers, would have to tell them the news, and, of course, shipments would immediately cease; possibly not in their entirety, but certainly it would have a damaging effect.

He agreed with me on that.

He told me that perhaps I was right but that he didn't want to do anything about it right then and asked me to go along and keep in close touch with it and keep him informed and to keep in touch with Mr. McDonough if anything out of the ordinary came up.

Q. 57. What did you say? *A.* I told him I would do that.

Q. 58. In your conversation with Mr. Prince, as you told it, you said something about this bank having 400 bank accounts. Did you mean it had 400 accounts on its books or 400 accounts with country banks? *A.* I mean by that, Mr. Welch, that there were approximately that number of banks in the country where live stock is produced that carried accounts with our bank.

Q. 59. Well, after this conversation and your promise to go along and keep him advised, what happened next, Mr. Reimers? *A.* Well, I again began a complete re-examination of the assets of the bank with a view towards determining whether or not I had been too pessimistic in my first

appraisal of it, and that required probably two and a half or three weeks.

That examination was conducted by myself and the officers of the bank under my direction.

Q. 60. And toward the end of that or after it was done, did some other event of some importance take place? *A.* During this time, and from there on, we were losing accounts. Our cash reserves were going down and I informed the directors of the bank unless something were done that, in my opinion, the bank would have to suspend business.

We went along like that until the national bank moratorium which I believe was the forepart of March in 1933.

Q. 61. I suppose that closed this bank, with all the others in the country? *A.* Our bank closed with the others; that is right.

Q. 62. Did you make an application to reopen? *A.* Yes, I did.

Q. 63. What happened to your application? *A.* It was turned down.

Q. 64. When was that? About when? *A.* Well, it was, if you will recall, there were a few of the banks that were licensed almost immediately, a day or so following the moratorium; and it was following that day or two—well, it was at the same time that I applied to reopen, and our application was refused.

The Member: We will suspend and take just a few minutes' recess. (There was a short recess taken.)

Q. 65. (By Mr. Welch). Before the recess, Mr. Reimers, you told us, I think, that your application to reopen had been turned down. *A.* That is right.

Q. 66. Or was turned down? *A.* That is right.

Q. 67. As a consequence of that, did you then again see Mr. Prince? *A.* Yes, I did.

Q. 68. Where? *A.* In New York.

Q. 69. And when with reference to the time that your application to reopen was refused? A. I believe the following day.

Q. 70. About when in the month was that, if you recall? A. Well, as I recall, the moratorium was very shortly after March 4th, and I think that was the first bank's license to be reopened after the moratorium, or about three or four days, if I recall correctly, following the moratorium, and it was during that three or four days that I applied to reopen, so I imagine it would be about March 8th, 9th, 10th, somewhere in there.

Q. 71. At whose suggestion did you go to New York? A. Mr. Prince.

Q. 72. How did you go? A. I flew to New York that night.

Q. 73. Did you have a further conversation with him? A. Yes, I did.

Q. 74. When you arrived in New York? A. Yes, I did.

Q. 75. Who was present? A. Mr. O. T. Henkle.

Q. 76. Will you tell us the substance of what was said by you and what was said by Mr. Prince on that occasion? A. I told Mr. Prince that the banking authorities had refused us permission to reopen the following—following the national moratorium without a substantial correction being made in the condition of the bank, and he asked me if I meant by a substantial correction substantially the amount that I had indicated to him in Chicago, and I told him that I did.

Q. 77. What did he say then? A. This is just what he said: "Why don't we close the damned bank and go over to the Exchange Building and start a new one? You come along with me and run it."

Q. 78. What did you say to that? A. I said, "Definitely no," and told him why.

Q. 79. What did you tell him? A. I told him that the

damage then would have been done in so far as the yards were concerned, that if this bank closed, the yards would have a black eye as far as its bank is concerned. I saw no future for it, and told him so; that in addition to that he could expect to receive, as I had previously indicated to him, not to exceed 30 cents on the dollar on his deposits, his company deposits; that he would lose his investment in the bank stock and could be assured of paying 100 percent assessment. He told me that I was probably right.

Q. 80. May I interrupt you to ask you: Had you said anything about cash or the need for cash? *A.* I had indicated to him every time I had talked to him that cash was a necessity and an immediate necessity regardless of what happened in the way of an asset correction.

Q. 81. Then when you told him of the need for cash and in these amounts, what did he then say to you? *A.* He talked about different ways of getting the money and asked me, knowing that I at one time had been connected with the office of the Reconstruction Finance Corporation, if there wasn't some way there that they could get the money there.

Q. 82. May I interrupt to ask you if he said anything about the Maine Company having cash? *A.* Well, I might say this, Mr. Welch. I neglected to say to you that during our discussion at Chicago, at the Club, that time that I referred to a few moments ago, that I was particularly interested, and naturally so, in just what the so-called set-up was, and Mr. Prince told me about the various companies and working arrangements of them and what his plans were.

He asked me if I was familiar in any way with the different companies. I told him I was not, and I was not at that time. He explained to me the names of the different companies, what his plans were, and what he was striving

to do. And I recall particularly that he drew attention to his plan to accumulate cash sufficient to retire debts of the companies in 1940, and that in whatever plan I might work, to please try and avoid calling upon that fund, if I could. And that same conversation was repeated in New York.

And following that he suggested that I go to the R.F.C. I told him that I didn't think there was any chance of getting money there. He asked me to go anyhow and try, and he told me that he would send Mr. McDonough with me to help me, and we did go back to Chicago. Mr. McDonough came on, I think, the following day or a day or two later, and we spent several days in the Federal Reserve Bank with the Reconstruction Finance officers, and knowing some of the examiners there, I got immediate attention to the class of assets that we wanted to consider first. That required probably a week or ten days.

We were asked to return and the answer was no. We were refused any loan.

Q. 83. So nothing came of the R. F. C. talk? *A.* Nothing whatever.

Q. 84. Well, then, what happened next? *A.* Well, with my own men, I assisted the R. F. C. examiner in going over the assets, and after they had returned to their office without giving us a definite answer, I continued on with compiling all of the facts, classifying the assets. That required possibly two weeks, maybe a little more.

In the meantime, I was in touch with Mr. Prince and Mr. McDonough on the telephone I think every day, two or three times a day.

While or during that two or three weeks, the examiners walked in one morning, came to my office, and told me that they were there to take charge of the bank.

The Member: What examiners?

The Witness: The State examiners.

The Member: You have been talking about the R.F.C. examiners up to now, haven't you?

The Witness: I was, on the matter of getting the loan, Your Honor.

The Member: That is the first we have heard about the State examiners?

The Witness: That is right.

The Member: Yes.

Q. 85. (By Mr. Welch). And did they say something about the length of time that your might keep open? *A.* Well, the head examiner told me that he was there to take charge of the bank, and I think he had a crew of seven or eight men with him, and I asked him if he wouldn't give me some time in which to get in touch with Mr. Prince and see what I could do. We agreed that he would give me 48 hours.

Q. 86. And what did you then do? *A.* Before any action was taken, Sir?

Q. 87. What did you then do? *A.* I immediately got on the telephone with Mr. Prince.

Q. 88. Will you tell us the substance of what was said by you and by him? *A.* I told Mr. Prince that the examiners were there in the bank and had given me 48 hours to decide what we were going to do with it.

Q. 89. What did he say? *A.* Well, Mr. Prince started to talk about various ways and methods of correcting the thing, going along, dwelt at length on returning to the R.F.C. to see what we could do there, and I finally told him, possibly a little out of patience, that I had called him on the telephone and if he didn't mind I would do the talking. We had been closed then for perhaps three weeks and I thought it was time that we were doing something. As a matter of fact, I had been given an ultimatum of 48 hours. We had to do something.

And I told Mr. Prince there was nothing that he could do

other than what I had previously advised him, and I indicated to him a plan of subordinating four million dollars of the company accounts, and that if he would do that that I thought I could get the bank open as a national bank, as a member of the Federal Reserve, and as a member of the Chicago Clearing House Association, and do it within a week.

Q. 90. What did he say to that? *A.* He asked me what would happen or what he would get on his deposits under such an arrangement, and I told him that I thought that he would recover approximately 50 and perhaps 60 cents on the dollar of the amounts he subordinated.

Q. 91. And what did he say then? *A.* I told him that if he did that, I would stay with him and work it out, and his answer was immediate to go ahead on that basis.

Q. 92. Did you go ahead? *A.* Yes, we did.

Q. 93. What did you do? *A.* We applied for a national charter on the basis—

The Member: This is still within the 48 hours that you—

The Witness: No, Your Honor. When I received the word I turned to the State examiners and told them that Mr. Prince had consented to this arrangement.

Then through an arrangement with the Commissioner of Banks of Illinois, whom I knew, I asked him to leave one of his examiners in the bank while I negotiated what I am about to speak of now.

Q. 94. (By Mr. Welch). Then go ahead and tell us what the negotiations were. *A.* We applied for a national charter on the basis of subordinating this four millions of company accounts.

Q. 95. Can you split that up for us as to what company and to what extent? *A.* Yes, I can.

The Maine Company, $1,800,000;

Transit Company, $1,300,000;

Produce Terminal Corporation, $300,000;

Central Manufacturing District, $600,000. Total, $4,000,000.

These deposits were subordinated under the following arrangement: The companies which subordinated were to be paid only out of certain inadmissible assets equal to the amount of the subordinated accounts.

Q. 96. And when you say "equal to the amount of the subordinated accounts," on what basis? On the book value of the assets in the bank? *A.* That is right. And those funds, or so-called unacceptable assets of the old State bank were segregated into a separate fund to be liquidated by the new bank. Incidentally, the new bank for which we applied for a national charter was in the name of the Live Stock National Bank of Chicago.

Q. 97. And that is the bank that is there today? *A.* That is right. Under this arrangement, as these assets that were removed from the old State bank were to be liquidated and the bank reserved the right—that is, the new bank, the Live Stock National Bank—reserved the right to put into this fund of unacceptable assets any other of its assets which it chose at their book value and received cash for them, and that the companies which subordinated their deposits were to be paid out of this fund only when the new bank agreed and the national bank examiners approved.

Mr. Welch: I should like at this time to offer five subrogation agreements which are the legal spelling out of what the witness has testified to in substance, and if there is no objection to them to substitute photostats for these original contracts later.

Mr. Clark: There won't be any objection to substituting photostats.

Are you familiar with these, Mr. King?

Mr. King: To some extent, yes.

Mr. Clark: Well, just check them.

The Member: Mr. Witness, you have gotten beyond your 48 hours, haven't you?

The Witness: Sir?

The Member: I say, in your testimony you have gone beyond the end of your 48 hours, but you didn't tell us what happened within the 48 hours. They gave you an ultimatum that you had 48 hours delay on, and then I don't know what happened within the 48 hours. Did they withhold action or did that get into—

The Witness: That is a customary thing as between State departments and the national departments, where the word is given that the proper correction is to be made, the State examiner stays in charge technically until the new arrangement is worked out.

The Member: Within the 48 hours that you were given, did you actually apply for your national bank charter?

The Witness: Absolutely; yes, sir.

The Member: So that that much happened within the 48 hours?

The Witness: Yes, sir.

The Member: And the State examiners had that much of an assurance of your intention to comply with their demands; is that right?

The Witness: I think within six hours, Your Honor.

The Member: I am interested to know how much of all this that you have recited happened within the 48 hours and how much went beyond that?

The Witness: That application for a new bank was made, I think, on the same day that I talked with Mr. Prince and got his word to go ahead.

The Member: What about the subordination, the details of the subordination arrangement? Had they been made before the 48 hours?

The Witness: We began work on those immediately, the same day.

The Member: Well, had they been worked out before the end of the 48 hours?

The Witness: Yes, sir; I had that all set. I knew we either had to do that or stay closed.

Mr. Clark: I have no objection to the introduction of these in evidence.

Mr. Welch: You have already been good enough to state that we can substitute photostats.

Mr. Clark: Oh, yes.

Mr. Welch: Then I offer as exhibit—

The Clerk: Seventeen.

Mr. Welch: A contract dated the 5th day of April, 1933, between Chicago Stock Yards Company of Maine and the Live Stock National Bank.

The next one is an agreement between Union Stock Yards and Transit Company and Live Stock National Bank, which will be Exhibit No.—

The Clerk: Eighteen.

Mr. Welch: Thank you, Mr. Ray.

The next one, between Produce Terminal Corporation and the Live Stock National Bank, the number being, Mr. Ray?

The Clerk: Nineteen.

Mr. Welch: And the next one, an agreement between Leonard, Prince, and McDonough, trustees of the Central Manufacturing District, and the Live Stock National Bank, being number—

The Clerk: Twenty.

Mr. Welch: And the next one, a second agreement between Union Stock Yards and Transit Company and Live Stock National Bank also dated April 5, 1933—

The Clerk: No. 21.

(The documents so offered and received in evidence were thereupon marked "Petitioner's Exhibits 17, 18, 19, 20, and 21," and made a part of this record.)

Q. 98. (By Mr. Welch). Without going through the contracts to dig it out, Mr. Reimers, was there some provision in them in respect to different levels at which the Maine Company deposits were to be subordinated and those of the other companies? A. Yes, the Maine Company was given a preference.

Q. 99. Above what? A. All others.

Q. 100. On whose insistence, if anyone's? A. Mr. Prince.

Q. 101. And by the words "all others," do you mean all the other companies in this enterprise, the Chicago Stock Yards enterprise? A. That is right.

Q. 102. Now, I take it, it is clear from your conversation with His Honor that you succeeded in getting your new charter? A. Yes, we did.

Q. 103. When did you actually get it, if you remember? A. I think on April 6, 1933.

Q. 104. Who became the stockholders of this new bank that then emerged and which is there today? A. The stockholders of the Stock Yards Bank & Trust Company, the State Bank, exchanged their stock for stock of the Live Stock National Bank of Chicago, share for share.

Q. 105. We have mentioned from time to time here a bank called the Central Manufacturing District Bank. A. Yes.

Q. 106. You will remember that we have done so. A. Yes, sir.

Q. 107. Have you had anything to do with transactions between the Maine Company and Produce Terminal with this Central Manufacturing District Bank? A. Yes, I have.

Q. 108. What have you had to do with those transactions? A. Well, there were certain real estate bonds, I should say defaulted real estate bonds. I think most of them were, at

that time; that had been purchased by the Produce Terminal totaling a little less than, I think, forty-nine thousand some odd dollars—(referring to documents)—$490,500.

Those bonds had been purchased in 1931 by the Produce Terminal Corporation from the Central Manufacturing District Bank.

Q. 109. Yes.

Had one of the other companies in the enterprise purchased another block? *A.* The Maine Company had purchased notes and claims including accrued interest of $501,439.58.

Q. 110. And what have you had to do with the securities representing those two purchases? *A.* I have actually had those under my charge for liquidation.

Q. 111. Now, Mr. Reimers, I wish you would summarize for us, if you will, using any data that you need, the extent of the participation of the Maine Company, the Transit Company, the Produce Terminal Corporation, and Central Manufacturing District in coming to the assistance of these banks in Chicago, and do it for us year by year, if you will, sir. *A.* Well, in 1930 the Transit Company paid $464,000 for capital stock—

Mr. Clark: Just a moment, please.

May I ask what the question and answer was?

The Member: Will you read it, Mr. Reporter? (Last question and partial answer read.)

Mr. Clark: I don't believe the witness has sufficient knowledge to testify as to that, Your Honor. I think he should be qualified further, at least.

The Member: Do you mean by reason of the characterization of these banks in Chicago that it leaves it too far open to cover anything—

Mr. Clark: I mean I don't think he has knowledge relative to these companies and also as to banks in Chicago.

The Member: I think if the question can be reframed or altered so as to be limited to the Live Stock National Bank and its predecessors, first, and then, if necessary, a succeeding question limited to the Central Manufacturing District Bank, we can take the witness' previous qualifications to speak on that subject, if that is all that is meant.

Mr. Welch: I think the question was somewhat loosely drawn, the phrase "The banks in Chicago."

Q. 112. (By Mr. Welch). Mr. Reimers, will you please summarize for us the extent of the participation of the Maine Company, the Transit Company, the Produce Terminal Corporation, and Central Manufacturing District in aiding the capital structure of the Live Stock National Bank and its predecessors, including in your answer such aid as was given to the Central Manufacturing District in the years 1932 through 1933.

The Member: Can you answer that question?

The Witness: Your Honor, if I might say something, I have checked with the receiver of the Central Manufacturing District on these figures—I mean the Central Manufacturing District Bank—on these figures.

Mr. Clark: That doesn't mean a thing, Your Honor.

Mr. Welch: If I may say a word, he testified, Mr. Clark, he has been in charge of the liquidation of those slow assets that came out of the Central Manufacturing District Bank.

Mr. Clark: That is true, but what he may have checked doesn't seem to me to have any bearing.

The Member: I think this is all precipitated by the unnecessary combination in the question of the two banks. If the question can be segregated so as to refer in the first instance only to the Live Stock National Bank, and its predecessors, we can dispose of that upon the qualifications

that the witness has expressed and then we can take up whether or not he can speak with regard to the Central Manufacturing District Bank.

Mr. Clark: That is what I meant.

Mr. Welch: Thank you kindly, sir.

Q. 113. (By Mr. Welch). Confine yourself first to the Live Stock National Bank and its predecessors and take it year by year from 1930 to 1933 and tell us the extent of the participation of the Maine Company, the Transit Company, the Produce Terminal Company, and the Central Manufacturing District in contributing to the capital structure of the Live Stock National Bank and its predecessors? A. In 1930 the Transit Company paid $464,000 for capital stock in the Stock Yards National Bank.

In that same year the Transit Company purchased from the Stock Yards Trust & Savings Bank real estate bonds having a face value of $100,000 and paid that amount for them.

In 1932 the Produce Terminal Corporation subscribed to and purchased $350,000 of debentures of the Stock Yards Investment Company and paid $350,000 for these debentures.

That investment company, incidentally, was a security affiliate of the Stock Yards National Bank.

In 1933 the Maine Company subscribed $1,500,000 to the capital of the Stock Yards Bank & Trust Company through Western Associates, Inc., and the Transit Company put up $1,016,414.84 of Government bonds, including interest. That was in connection with an attempt to help the Stock Yards Bank and Trust Company.

In that same year $4,000,000 was subordinated at the time of the organization of the Live Stock National Bank in amounts as follows:

Produce Terminal Corporation, $300,000;

Central Manufacturing District, $600,000;
The Transit Company, $1,300,000;
The Maine Company, $1,800,000.

Q. 114. Now let me interrupt to ask you whether or not the Transit Company in 1932 subscribed to and purchased debentures of Stock Yards Investment Company as did Produce Terminal, and, if so, to what extent? *A.* Are you speaking of the Transit Company? Is that the question?

Q. 115. That is right. In 1932. *A.* In 1932 the Transit Company put in $1,340,000 in the same way; purchased debentures.

Q. 116. Now, to turn to the Central Manufacturing District Bank: Do you know of your own knowledge whether the Produce Terminal Company purchased some real estate bonds from the Central Manufacturing District Bank in 1931? *A.* Yes, I do.

Q. 117. And do you know of your own knowledge whether or not the Maine Company purchased some such bonds from the Central Manufacturing District Bank in 1931? *A.* They purchased no bonds, Mr. Welch; they purchased notes.

Q. 118. Notes of what? *A.* Individuals, corporations; largely individuals.

Q. 119. And what was the amount of the purchase of real estate bonds in 1931 by Produce Terminal Corporation from Central Manufacturing District Bank? *A.* $490,500.

Q. 120. And the Maine Company's purchase of notes of individuals and corporations in that same year? *A.* Was $501,439.58.

Q. 121. Were those purchases made on the basis of book value? *A.* Yes, sir.

Q. 122. Did something happen about a purchase of the bank building of Central Manufacturing District Bank? *A.* Yes.

Q. 123. Who bought that? *A.* The Central Manufactur-

ing District Bank was purchased by, I think it was the Maine Company that got that, for $250,000.

Q. 124. May I check whatever you are working from and see if I— *A.* (After referring to documents) No, the Central Manufacturing District.

Q. 125. Did what? *A.* Bought that bank building.

Q. 126. For what amount? *A.* For $250,000.

Q. 127. In what year was that? *A.* That was in 1932.

Q. 128. Now will you summarize what you have just testified to us, year by year, lumping all companies together so that we get the total amount of all companies put into the Live Stock National Bank and its predecessors and Central Manufacturing District Bank, beginning with 1930. *A.* You mean take them year by year?

Q. 129. Yes. *A.* Well, the total amount for 1930 was $564,000.

Q. 130. The next year. *A.* For 1931, $990,500.

Q. 131. The next year. *A.* For 1932, $1,940,000.

Q. 132. For 133. *A.* And for 1933, $6,516,414.84.

Q. 133. Making a grand total for all companies for all years of what? *A.* Making a grand total of $10,010,914.84.

Q. 134. Mr. Reimers, did you, let us say as of December, 1933, have an opinion as to the probable recovery these companies as a unit would realize from their participation in these banks about which you have testified? *A.* Yes, I have.

Q. 135. What was your opinion? *A.* Well, Mr. Welch, I figured it about this way: Of the approximate $10,000,000 that had gone into the bank picture, a million and a half of it went into the structure of the Live Stock National Bank and I figured that the stock of that bank was reasonably worth that amount.

Of the balance of 8½ million or approximately that amount, I estimated, after a very careful appraisal of all of those assets, that there would be a possible eventual recovery of not to exceed 2½ million.

Q. 136. So that the total recovery, in your opinion, counting the stock in the Live Stock National Bank as good, would be what? *A.* Two and a half and one and a half is $4,000,000.

Q. 137. May I ask you to what extent your opinion has been justified by experience? *A.* Well, so far, Mr. Welch, we have sent East out of that whole picture $1,022,728.73.

That includes the following items, if you want them. Do you want them separate?

Q. 138. I don't know that it is necessary to do so. What does it look like now? Will you exceed or fail to reach your 1933 estimate, or what would you say? *A.* I have no reason to change my original estimate. I think we will come very close to that mark.

It will be slow, however, because the remaining assets are principally real estate.

Mr. Welch: You may inquire.

Cross-Examination.

X-Q. 139. (By Mr. Clark). Mr. Reimers, you have testified relative to an amount of approximately $10,000,000 which was put in for bank assistance. *A.* Yes, sir.

X-Q. 140. Now, of what was that comprised? I mean, what was the composition of that $10,000,000? *A.* I am sorry; I don't understand your question.

X-Q. 141. Well, was it securities, was it cash? *A.* That went in to make up the $10,000,000?

X-Q. 142. Yes. A. It was cash.

X-Q. 143. It was cash? A. Yes, sir; every cent of it.

X-Q. 144. No securities, whatever, involved? A. Not a one; no, sir.

X-Q. 145. No bonds? A. It was all hard cash.

X-Q. 146. Let me be certain that I am clear on this point. Hadn't you previously testified that there were some Government bonds that went in in this regard? A. Yes, on or about January 10, 1933, the Transit Company put a million dollars of Government bonds, Treasury notes, to be

X-Q. 147. Then why do you say it was all hard cash? A. Because they were sold the same day and the cash realized

X-Q. 148. I know but that is not quite the same thing, is it? A. Well, I think there was a difference of—the difference was getting them to the Federal Reserve Bank and getting the cash on them.

X-Q. 149. I see.

Wasn't there any stock involved in this? Weren't there some purchases of stock? A. You mean that the bank took stock?

X-Q. 150. No, the companies. A. I don't believe I understand your question there. Are you asking me if what the bank received or the banks received—did they receive any stocks or bonds, or are you asking me—I don't—

X-Q. 151. Well, Central Manufacturing District purchased some stock at the bank, didn't it? A. The Central Manufacturing District?

X-Q. 152. Yes. A. Purchased stock at the bank?

X-Q. 153. Stock at the bank. Wasn't that included? A. I think there was—let me check (referring to documents).

Mr. Clark. I don't recall of any item that I have referred

of the Central Manufacturing District purchasing any stock.

X-Q. 154. How about the other companies? A. Purchasing bank stock? Yes, there is reference made on the first item in 1930, the Transit Company bought capital stock of the Stock Yards National Bank, $464,000 and paid the cash for them.

X-Q. 155. How do you classify that? Would you classify it as an investment? A. You mean on the part of the purchaser, the Transit Company?

X-Q. 156. Yes. A. I should say it were.

Mr. Clark: I have no further questions.

Mr. Welch: Nothing further from me, Mr. Reimers. (Witness excused.)

Mr. Welch: If Your Honor please, I was asking Mr. McDonough, who is our next witness, how he is feeling. He hasn't felt so well, today, and I was somewhat hesitant about starting unless Your Honor is insistent.

The Member: He is going to be here for some time; that is, he will be on the stand for some little time?

Mr. Welch: Yes, I assume he will be on the stand for some little time.

The Member: Very well. We will suspend now until 10 o'clock tomorrow morning. (Whereupon, at 4:25 o'clock p. m., January 31, 1939, the hearing in the above-entitled matter was adjourned.)

[Title omitted.]

THIRD DAY.

REPORTER'S MINUTES.

[Filed February 2, 1939.]

Hearing at Washington, D. C., on the 1st day of February, 1939, at 10 o'clock a. m.

The hearing in the above-entitled proceeding was resumed on this the 1st day of February, 1939, before the HONORABLE JOHN M. STERNHAGEN, Member of the United States Board of Tax Appeals, pursuant to adjournment heretofore taken.

Appearances: (Same as heretofore noted.)

PROCEEDINGS.

Mr. Pierson: Mr. Clark is here. I think we can start with the witness. He just stepped out. He will be right back.

The Member: Very well.

Mr. Welch: Mr. McDonough.

MR. JAMES A. McDONOUGH

called as a witness by and on behalf of the Petitioner, and, having been first duly sworn, was examined and testified as follows:

Direct Examination.

Q. 1. (By Mr. Welch). What is your full name, sir? A. James A. McDonough.

Q. 2. Where do you live, Mr. McDonough? A. 50 Beacon Street, Chestnut Hill, Newton, Mass.

Q. 3. What do you do, sir? A. I am the vice-president of the Chicago Stock Yards Company, the Maine Company.

Q. 4. That is what we call the Maine Company? *A.* Yes, sir.

Q. 5. Are you also on its board of directors? *A.* I am a member of the board of directors; yes, sir.

Q. 6. Are you an executive officer of that company? *A.* I am the executive officer of that company under Mr. Prince, the president.

Q. 7. How long have you been vice-president of the Maine Company? *A.* Since March, 1934.

Q. 8. Prior to that time what position did you hold? *A.* I was assistant to the president, Mr. Prince, of the Maine Company.

Q. 9. It follows, I suppose, that you are on the Maine Company pay roll? *A.* Yes, sir.

Q. 10. Are you a director in any of the operating companies in Chicago? *A.* I am.

Q. 11. In what ones? *A.* The Union Stock Yards and Transit Company, Chicago Junction Railway Company, Chicago Junction Railroad Company. I am also director of the bank. I am vice-president of the three companies I mentioned and trustee of the Central Manufacturing District.

Q. 12. Are you on the pay roll of any of the operating companies in Chicago? *A.* I am not, sir.

Q. 13. Now, to go back to the period of 1930 to '33, when I think your title was that of assistant to Mr. Prince— *A.* Yes, sir.

Q. 14. —will you tell us what your duties were then? *A.* Under Mr. Prince's direction while he was in this country, and while he was away, personally, I was continually on the telephone while I was in the East conferring with the operating men in Chicago, and directed the business policies of the company, the selection of officers and directors, bank deposits, general matters of policy other than the actual routine operating of those companies.

Q. 15. Would it be fair to say that you were the chief executive officer of the Maine Company in Mr. Prince's absence? *A.* Yes, sir.

Q. 16. And when Mr. Prince was available? *A.* I consulted him first, and after the result of the conferences, our orders were passed on to Chicago and were carried out at once.

Q. 17. How was your time divided between the West and the East? *A.* I made two—I made at least two trips a month to Chicago, and if the occasion warranted it, I made more; and during the bank crisis, I was out there for several months.

Q. 18. Mr. Green points out to me that you said something about directing the policies of "those companies." By "those companies," did you mean the operating companies? *A.* I meant the operating companies.

Q. 19. In Chicago? *A.* In Chicago; yes, sir.

Q. 20. Taking the years 1930 to 1933, did you receive any reports of the operations of the units in Chicago? *A.* I did.

Q. 21. And by "units," I mean, of course, the Chicago companies. *A.* The Transit Company, the Railway Company, the Produce Terminal Corporation, and the Central Manufacturing District.

Q. 22. When you received those reports, what did you do with them? *A.* I examined them and discussed them with Mr. Prince.

Q. 23. And as a result of that examination, or that discussion, would anything happen from time to time? *A.* Yes. The suggestions and orders would be given to the operating men in Chicago telling them what the Maine Company wanted them to do.

Q. 24. Now, will you tell us in a general way what sort of orders would go out from you to the Chicago companies?

A. Well, if there were any changes in officers or directors, the manner in which bank deposits were handled, and what bank the moneys were to be placed, if there were any large sums requested for additions or improvements, or if the District wanted money to buy real estate or put through a big real estate deal, any matter that called for large amounts of money that was out of the ordinary daily business, we would discuss and pass on them.

Q. 25. And after you had passed on them? *A.* Those orders from the Maine Company would be carried out at once, on the spot.

Q. 26. I think you have already mentioned the banking crisis in Chicago, as I call it. *A.* Yes.

Mr. Welch: Strike that out, will you? I don't think it is fair to characterize it.

Q. 27. (By Mr. Welch). You have already mentioned some transactions relating to the Chicago banks. *A.* Yes, sir.

Q. 28. I think you said you were out there at that time? *A.* Yes, sir.

Q. 29. What, if anything, did the Maine Company do about the way that whole matter was handled? *A.* The Maine Company handled and controlled the entire transaction from beginning to end. It controlled it by passing orders down to Mr. Reimers and to Mr. Leonard and Mr. Hackett. As far as Mr. Hackett was concerned, they were carried out forthwith.

The Member: You are talking now about the situation in the early part of 1933?

The Witness: Yes, sir; at the time the bank was reorganized; yes, sir.

Q. 30. (By Mr. Welch). Who decided what accounts were to be subordinated? *A.* The Maine Company, through Mr.

Prince and myself; principally through me because I was on the spot.

Q. 31. And the amounts and the ranking of the subordination? *A.* Yes, sir; the amounts and the ranking and how they were placed; yes, sir.

Q. 32. When did you first become assistant to Mr. Prince, the president of the Maine Company? *A.* About 1926.

Q. 33. Was that shortly after the death of Mr. Sporr? *A.* About the time of the illness, at the end of Mr. Sporr's illness, and right at his death; yes, sir.

Q. 34. And we have already testified about Mr. Sporr, but I will ask you who he was? *A.* Mr. Sporr had been in complete charge of the affairs in Chicago of the operating companies, and he carried on by himself without any material control from the East.

Q. 35. Had you been associated with Mr. Frederick H. Prince before 1926? *A.* Oh, yes, sir; for many, many years.

Q. 36. In what capacity? *A.* Oh, I began as a stenographer and general office assistant, and as time went on, I became his confidential secretary.

Q. 37. What was it that happened about 1926 that resulted in your becoming his assistant? *A.* Mr. Prince became actively engaged in the handling of the affairs in Chicago as president of the Maine Company.

Q. 38. And what occasioned his becoming so? *A.* At the death of Mr. Sporr.

Q. 39. Yes. *A.* And as a result of that, he took me into the Maine Company as his assistant.

Q. 40. When you became Mr. Prince's assistant, what was the first thing that you did to equip yourself for your new job, Mr. McDonough? *A.* Well, I made a study of the situation of the relationship of the various companies to the Maine Company, and tried to get a general picture of the whole thing.

Q. 41. As a consequence of the study that you made, did you produce anything in writing? A. I did.

Q. 42. What did you produce? A. Knowing Mr. Prince's well, I produced a condensed concise cash statement of receipts and expenditures.

Q. 43. Had that, to your knowledge, ever been done before? A. No, sir.

Q. 44. How condensed was it? A. Two pages.

Q. 45. What was your reason, Mr. McDonough, for condensing it so closely? A. Because Mr. Prince has always expected and insisted on receiving a statement as near to one page as was possible to put down. He wanted it as concise as we could make it.

Q. 46. I show you a paper and I ask you if this is a copy of that first condensed statement that you have testified to making? A. Yes, sir. (Paperwritings were handed to Mr. Clark by Mr. Welch.)

Mr. Clark: You want to offer this in evidence?

Mr. Welch: I do.

Mr. Clark: I would like to have it understood, Your Honor, that this is offered only as something which Mr. McDonough turned over to Mr. Prince, because we have balance sheets in evidence which elaborate—

The Member: The record shows what is it. The record shows how it happened to be made.

Mr. Clark: I just wanted—

The Member: There is nothing that Counsel can say that will add anything to that.

Mr. Clark: I just wanted to have it clearly in the record.

The Member: You are offering it, Mr. Welch?

Mr. Welch: Yes, if I may.

The Member: You have no objection to it?

Mr. Clark: No objection.

The Member: Received. What is the number?

The Clerk: Petitioner's Exhibit No. 22.

(The document so offered and received in evidence, was marked "Petitioner's Exhibit 22," and made a part of this record.)

The Member: Is that merely loosely clipped together? There are two pages of it, are there?

Mr. Welch: Yes.

The Member: I wanted the record to show exactly how much of it there is.

Mr. Welch: The record shows, then, that there are two pages of it loosely clipped together.

The Member: All right.

Mr. Welch: And I undertake to see that it is attached in better fashion.

The Member: It will stay together. I simply wanted to be sure that anything else doesn't get under that clip that is part of it.

Q. 47. (By Mr. Welch). When you got the statement prepared, Mr. McDonough, of which Exhibit 22 is a copy, what did you do with it? A. I handed it to Mr. Prince, the president of the Maine Company.

Q. 48. As a consequence of that, did you have any conversation with him in respect to it? A. I did.

Q. 49. Will you tell us the substance of what was said by him at that time? A. In my own words, or—

Q. 50. Oh, yes. A. "Mr. McDonough," he said, "I am delighted that you arrived at this form of report, and I hope that you will keep it constantly before you and keep it up to date, as nearly as you can, because I want to accumulate all of the cash that I can, between now and 1940 to meet a very large obligation that is ahead of me, and I want to know what my cash position is from day to day, if possible, and I want you to keep me so advised."

Q. 51. Did he say anything about what the obligation ahead of him was, Mr. McDonough? A. He did.

Q. 52. What did he say it was? A. He said that the New Jersey Company's charter was expiring in 1940, and that he wanted to be in a position to meet those obligations when they became due.

Q. 53. Did he say anything else at that time, Mr. McDonough—refreshing your recollection, did he say anything about you going to Chicago? A. Yes, he told me that he wanted me to be familiar with the operations, because of the extra duties that were falling upon him in the Maine Company, because of taking over the active control of the properties in Chicago. He wanted me to go out there to the live stock show, become familiar with its purpose, to take and familiarize myself with all of the properties, and with their workings, and to come to know who the people were who were in them, and to meet the people who were out there, to do business with them.

Q. 54. Did he say anything else, Mr. McDonough,—refreshing your recollection, did he say anything about you being his eyes and— A. Oh, well, he would say that from time to time, that I was to be his eyes, his ears, and that I was to just represent him—be him, while he was not on the field.

Q. 55. After that, from time to time, did you prepare statements for Mr. Prince in the form of Exhibit 22? A. Yes, sir.

Q. 56. How often? A. Well, we—annually—usually semi-annually but always annually in that form, but we gave him weekly, monthly, quarterly, or whenever he wanted it, statements of the cash position of those companies, as he asked for them, but we kept him informed at least weekly as to what the situation was.

Q. 57. Was Mr. Prince occasionally out of the country? A. Yes, sir.

Q. 58. In the event that he was out of the country, what, if anything, was done about furnishing him information? A. He got those by letter, or by—in the mail—and if anything very important came up, why, he was communicated with by cable.

Mr. Welch: Excuse me a moment.

Q. 59. (By Mr. Welch). Taking the years 1930 to 1933, how did your activities in Chicago compare with the earlier years about which you are now talking, in 1925, say? A. Welk, they increased, and as the time went on.

Q. 60. What would you say was the extent of your activities in managing the operating companies in the years in question, here, 1930 to 1933? A. Well, in constant touch with them.

Q. 61. Were you doing anything else? A. Yes.

Q. 62. How much else?

I mean by that, what proportion of your time and energies by 1930 to 1933 was given to the Maine Company and its interests? A. Practically all of it.

Q. 63. Do you remember an occasion in 1927 when you had a discussion with Mr. Prince that had something to do with New Jersey common stock that was pleged in bank accounts on bank loans of F. H. Prince & Company? A. I guess so; yes, sir.

Q. 64. Will you tell us the substance of what he said at that time about conditions and the stock that was pleged? A. Mr. Prince—we were in Mr. Prince's office, and he said, "Mr. McDonough, I am very much alarmed over the present hullaballoo that is going on in the stock market. I don't think there is anything underneath it and I don't believe it is sound. There is going to be trouble. I want you to take and get out of the brokerage business.

get rid of all the accounts we have, even though they belong to friends. Get our money in and get under cover before the storm comes."

He said, "We have a lot of Chicago Junction common stock out with brokers as collateral on these loans and I want you to see to it that just as soon as you can you get that Jersey common stock into the Maine Company."

The Member: Will you read that last portion of the answer starting with "We have a lot of Chicago Junction—"?

(Answer read as follows: "He said, 'We have a lot of Chicago Junction common stock out with brokers as collateral on these loans and I want you to see to it that just as soon as you can you get that Jersey common stock into the Maine Company.'")

The Member: Is that a correct statement or do you want to correct it?

The Witness: That is the correct statement.

The Member: "Chicago Junction common stock"?

The Witness: Chicago Junction common stock; yes, sir; that is the stock in the Jersey Company.

The Member: That is not clear.

Mr. Welch: No.

The Member: You mean the Chicago Junction Railway Company stock which was owned by the New Jersey Company?

The Witness: No, the stock that was owned by Mr. Prince, as I remember it.

The Member: Perhaps you can clear it up.

Mr. Welch: Let us get at it this way:

Q. 65. (By Mr. Welch). Remember, Mr. McDonough, we call the Jersey Company throughout here, the Jersey Company. A. The Jersey Company; yes, sir.

Q. 66. Was it stock of that company to which you were referring? *A.* Stock of that company; yes, sir.

Q. 67. And was the stock about which you were talking stock of that company belonging to the Maine Company? *A.* Yes, sir.

Q. 68. And pledged where? *A.* As collateral with loans.

Q. 69. By what concern? *A.* F. H. Prince & Company.

The Member: What were you saying about the Chicago Junction stock?

The Witness: I should have called it the Jersey Company, sir.

The Member: That is what I asked you; whether you wanted to correct that and you said no, it was correct. I want the record clear. If we can start again. Suppose, Mr. Reporter, you get back to Mr. Welch's original question before that and let us get that answered now, clearly, because it is confused.

(Record read as follows:

"*Q.* Will you tell us the substance of what he said at that time about conditions and the stock that was pledged?")

The Member: Start again, Mr. Witness, and give us the answer.

The Witness: The whole thing?

The Member: Answer this question that is put to you now.

The Witness: Will you read again the question?

(Last question again read.)

A. He said, "Mr. McDonough, I don't like the situation." He said, "There is nothing under this present stock market activity and there is going to be trouble. Before this trouble comes upon us I want to be out of danger. I want to get rid of all of our margin accounts, and," he said, "get them out of the office, and," he said, "in connection with those margin accounts I want you to take up the

stock of the Jersey Company that is now collateral on F. H. Prince & Company loans with the banks."

Q. 70. (By Mr. Welch). You have told us, Mr. McDonough, of a conversation you had with Mr. Prince in 1926 about his plan for the Jersey Company. *A.* Yes, sir.

Q. 71. May I ask you whether or not he has discussed those plans with you at any time since then? *A.* Yes, sir; he discusses with great regularity.

Q. 72. Going back to the years 1930 to 1933, can you tell us some specific time when he had such a discussion with you? *A.* One time in 1933 that I recollect was at the time of the banks closing.

Q. 73. That is when there were plans under way to subordinate funds in the Chicago bank? *A.* Yes, sir.

Q. 74. That, then, would be some time in the spring, in March or April, say, of 1933? *A.* Yes, sir.

Q. 75. Now, will you tell us; if you will, the substance of what Mr. Prince said to you at that time? *A.* Mr. Prince again referred to the obligations of 1940. He told me that the opening of the bank would necessitate the subordinating of at least $4,000,000, and he very definitely made it clear that the Maine Company's subordination was to be treated entirely different from the others.

He was most explicit in his instructions that I should see to it that the Maine Company's deposit would come—

Mr. Clark: Just a moment.

State what he said without characterizing it.

The Witness: I can't state it exactly. I am giving the gist of it.

As near as I can, he was most positive about how he wanted the Maine Company's deposit to be handled.

Q. 76. (By Mr. Welch). Did he say anything further at that time as to what his plans were in 1940? *A.* Yes, sir.

Q. 77. Will you tell us what he said at that time? *A.* He

said he was accumulating the stock of the New Jersey Company, and that he wanted to take and be in a position in 1940 where he would own all of the stock, that he could close up the company and liquidate it in 1940, and at that time he said he wanted $10,000,000 of working capital, free cash, in the till of the Maine Company to meet any emergencies that might arise.

Q. 78. Did he say anything else? Did he say anything about the amount of money that would be required? A. Yes.

Q. 79. What did he say in that respect? A. About $30,000,000 was necessary.

Q. 80. Did he say anything else? Have you exhausted your recollection as to what he said? A. I think he said at that time, like I said before, the company had been in debt since it started and that by 1940 that 50 years was long enough for any company to be in debt, and he wanted to get rid of it, wanted to have all the property into the Maine Company. He just wanted to have one corporation.

Q. 81. Did he say anything about wanting it free of debt? A. Yes, sir. That was the principal theme; that in 1940 he wanted to have this entire property free of debt and $10,000,000 in cash in the treasury.

Mr. Welch: You may inquire, Mr. Clark.

Cross-Examination.

X-Q. 82. (By Mr. Clark). During the years 1930 to 1933, what was Mr. Prince's official connection with the Chicago Stock Yards Company? A. President.

X-Q. 83. Was he a member of the board of directors? A. Yes, sir.

X-Q. 34. And who was chairman of the board? A. There wasn't any chairman of the board.

X-Q. 85. I see. A. You are talking of the Maine Company now?

X-Q. 86. Yes. A. Yes, sir.

X-Q. 87. Now, referring to what we call the New Jersey Company— A. Yes, sir.

X-Q. 88. —during those same years, what was Mr. Prince's connection with that company? A. President and director.

X-Q. 89. And director.

Referring to the Produce Terminal Company— A. Yes, sir.

X-Q. 90. —what was his connection, if any, with that? A. He may have been a director. I am not sure, sir.

X-Q. 91. You don't recall? A. No, sir.

X-Q. 92. Well, you were handling all of his affairs at that time. A. Yes, sir.

X-Q. 93. And you don't remember? A. No, sir; not exactly. He may have been, I don't know. I can't tell you, offhand, about that one.

X-Q. 94. On Western Associates, Inc.— A. Yes, sir.

X-Q. 95. —what, if any, was his connection? A. None.

X-Q. 96. Live Stock National Bank of Chicago? A. Director.

X-Q. 97. Central Manufacturing District? A. Trustee.

X-Q. 98. Central Storage and Forwarding Company? A. None, as I remember it.

X-Q. 99. Chicago Junction Railroad? A. None, as I remember it.

X-Q. 100. What we call the Railway Company? A. Director.

X-Q. 101. Harness & Saddlery Company? A. None.

X-Q. 102. Union Stock Yards and Transit Company? A. Chairman of the board of directors.

X-Q. 103. Do you know whether or not Mr. Prince re-

ceived compensation from any of these companies? A. Yes, sir; I do.

X-Q. 104. And what was that, or from what companies, if you don't know the precise amounts? *A.* I think he received $17,500 a year from the New Jersey Company as president; he received $50,000 a year as president of the Maine Company; and he received $30,000 a year as chairman of the board of the Transit Company.

X-Q. 105. Did he receive compensation from any of the other companies? *A.* No, sir.

X-Q. 106. You were compensated during this period, were you not, Mr. McDonough? *A.* From—

X-Q. 107. I say, you were compensated for your activities? *A.* No, not during those three years; no, sir. I didn't receive any compensation from the Maine Company until '34.

X-Q. 108. No. Didn't you receive any compensations for what you were doing during those years? *A.* Not one penny, sir; no, sir.

X-Q. 109. Didn't Mr. Prince pay you anything? *A.* Why, certainly, Mr. Prince paid me.

X-Q. 110. Well, yes. *A.* Yes.

X-Q. 111. I didn't ask you whether it was from the corporation, or not. *A.* Oh, wait a minute. I am talking about Mr. Prince as a corporation, as president of the Maine Company. I am not talking about Mr. Prince as an individual.

X-Q. 112. Yes, I know, but Mr. Prince paid you, himself, didn't he? *A.* Mr. F. H. Prince & Company paid me; yes, sir.

X-Q. 113. F. H. Prince & Company? *A.* Yes, sir.

The Member: You received no compensation from any of the corporations which are shown on this chart, did you?

The Witness: Not at that time; no, sir.

The Member: Is that what I am to understand?

The Witness: Yes, sir.

The Member: From the beginning of the year 1930 until the end of the year '33?

The Witness: I think—I may have been getting—I think—I don't know just exactly. When I was assistant treasurer of the New Jersey Company, I got a very small salary there, but I don't know exactly. To the best of my recollection, from 1930 to '33, I didn't receive any compensation at all, sir.

X-Q. 114. (By Mr. Clark). How much did you get from Mr. Prince during this period? A. I got $53.84 a week up to 1930, and then it went up. Beginning 1930, it went—I got about a hundred dollars a week up to, I think—well, it amounted to about a hundred dollars up to '33, total; that is, my income.

X-Q. 115. You have spoken about these conversations that you had with Mr. Prince relative to his great fears on account of the expiration of the charter of the New Jersey Company in 1940 and his worry relative thereto, and the fact that he wanted stock of the New Jersey Company acquired by the Maine Company.

Now, do I understand that that stock was pledged with banks at that time?

Mr. Welch: Just a moment. I don't know how important it is, but the first part of the question seemed to me not at all an accurate statement of what he has testified to. For that reason, I am objecting.

The Member: Suppose we let the witness say whether it is an accurate statement or not.

X-Q. 116. (By Mr. Clark). Is what I have stated to you accurate? A. Will you please repeat the question?

(Question read.)

Mr. Welch: The true part of it might be answered.

X-Q. 117. (By Mr. Clark). Well, is it true that you spoke

about that in the record? Do you recall? A. I didn't say anything about Mr. Prince's fears of 1940.

X Q. 118. I didn't say 1940. A. By 1940.

X Q. 119. Relative to 1940. A. Well, he didn't express any fears. He just put it on a business basis, a sound business policy, that he wanted to do it. He wasn't afraid of anything.

X Q. 120. Then I may have a misrecollection, but I thought you stated that he was greatly worried relative to that. Was he or was he not greatly worried relative to the situation in 1940? A. He was worried but he wasn't afraid of it; yes, sir.

X Q. 121. I see.

All right, then, please answer the question.

Mr. Welch: Which question is this, now?

Mr. Clark: The only question which is pending.

Mr. Welch: It is so far back I think it would be fair to the witness—

Mr. Clark: I think you are quite right.

The Witness: Will you give me that question again, please?

X Q. 122. (By Mr. Clark). Well, really, the question is this, and I might restate it:

Was the stock of the New Jersey Company pledged with banks for loans at the time when Mr. Prince told you that he wished it acquired for the Maine Company? A. No, sir.

X Q. 123. It was not? A. That was stock that was already acquired.

X Q. 124. Did it ever occur in conversations between you and Mr. Prince that the bonds of the New Jersey Company should be acquired by the Maine Company? A. Yes, sir.

X Q. 125. What was his idea relative to that? A. Well, Mr. Prince always went on the theory that securities in cor-

porations in which he was active and had full knowledge of were the best securities that he could buy, and that if he could acquire them at a price, that he would buy the New Jersey bonds in the market from time to time, but—

X-Q. 126. Did he buy any? *A.* No, sir.

X-Q. 127. Nor the Maine Company? *A.* No, sir.

X-Q. 128. Why wouldn't that have been the logical step to take in order to protect his position in 1940? *A.* Because he expected and anticipated and was devoting his time to get sufficient money in hand to redeem them, pay them off.

X-Q. 129. But they could have been redeemed if they had been acquired? I mean, they could have been wiped out by acquisition? *A.* I don't think so, sir.

X-Q. 130. Could they not? *A.* No, sir. I think the money would have had to remain with the trustee.

The Member: What were they selling at at that time?

The Witness: At above par, sir, around par, above par. They have always sold up there.

The Member: In other words, he had to pay above par—

The Witness: Pay a premium for it; yes, sir.

The Member: And let them stand until they matured, and mature them at the par value?

The Witness: Yes, sir.

The Member: Did I understand you correctly to say that during these years, when he talked about the forthcoming necessity for liquidating these obligations in 1940—I thought I understood you to say that he would have acquired the bonds if he could have acquired them at a price?

The Witness: Yes, sir.

The Member: That is what you said, wasn't it?

The Witness: Yes, sir.

The Member: Now, do you say that they were selling at that time above par?

The Witness: Around par; yes, sir; I don't know what it was then.

The Member: When you said that he would have acquired them if he could have acquired them at a price, what do you mean by "at a price"?

The Witness: Well, comparing them with what we are picking up the Maine Company bonds, at a price, a going price below the par value of it—you see the Jersey Company bonds held up. The other securities went down.

The Member: No; I am trying to get a more specific meaning to your phrase "at a price."

The Witness: Well—

The Member: He could have bought them "at a price."

The Witness: Yes, sir.

The Member: What did you mean?

The Witness: They weren't selling low enough to warrant it wasn't worth while to call them at the price.

The Member: You mean the price was too high?

The Witness: Yes.

The Member: If he could have got them at a price that he thought was satisfactorily low, he would have done it; is that right?

The Witness: Yes, sir; and he would have depreciated the amount of cash in the Maine Company to take them in. His principal thought first was to maintain—

The Member: What was approximately the level at which he would have thought the price was a satisfactory low price?

The Witness: I couldn't say.

Mr. Welch: If Your Honor please, I was going to say it is very difficult for him to say what Mr. Prince would have thought.

The Member: I know, but I am asking the witness—

The Witness: He never—

The Member: —to express in more detail the statement, the thought which he has already expressed in altogether too vague terms. He has said that Mr. Prince would have acquired them at a price, and he says by "at a price" he meant at a low enough price. Now, I want to know what a low enough price would have been. Does he mean a low enough price at a bargain of 30, or does he mean—

The Witness: Oh, no.

The Member: —a price a shade below par? Or what does he mean? It doesn't mean anything when you say "at a sufficiently low price."

Now, if the witness has any elucidation of that, it is proper to put it in the record.

The Witness: Your Honor—

The Member: If he has elucidation, that fact can appear in the record.

The Witness: Your Honor, he never discussed the price of the Maine Company bonds. It was just in general conversation, general trends. He never put a price on it.

X-Q. 131. (By Mr. Clark). I show you, Mr. Witness, the schedule to which Petitioner has no objection as to the introduction thereof. It refers to the high and low prices on the sales on the market of the New Jersey Company's bonds as reported in Poor's Industrial Section.

I will refer you to the years 1930 to '33, inclusive, and ask you to read for the record the high and low statements thereof. A. 1930, 94-⅛ to 86;

1931, 95-¼ to 90—these are the 4's.

X-Q. 132. Yes. A. 1933, 93-¾ to 82.

On the 5's, 130 is 102-⅜; 1931, 104; 1932, 98½; 1933, 101¼.

The Member: Mr. Welch, do you recognize Poor's as an authoritative statement?

Mr. Welch: We had agreed that those figures could go in.

The Member: Well, I understand they can go in, but is there any dispute about their weight?

Mr. Welch: No, no.

The Member: Is Poor's an adequate disclosure of the quotations of those years, as you will agree?

Mr. Welch: I accept the figures as read by the witness as proper quotations of the prices of these bonds for the years as read.

Mr. Clark: I am not sure whether the lows were read by the witness or not.

The Witness: No, they weren't sir.

The Member: He read the lows as to the 4's, but he didn't read them as to the 5's.

4. (Continuing) In 1930, the lows on the 5's were 98⅛; '31, 90; and '32, 81; '33, 90.

Mr. Clark: Should I offer this now, Your Honor? It properly goes in as part of our case. Does it make any difference to you, Mr. Welch?

Mr. Welch: We have admitted for the record the figures in which you are interested and I don't see why we should have another exhibit now that I have done so.

Mr. Clark: Oh, well, I would like to have it in as an exhibit certainly. That has been agreed to. The only question I am asking is whether at this time you have any objection to its introduction, because I will offer it now.

Mr. Welch: Then I will agree that the sheet may go in as an exhibit and a memorandum of the testimony of the witness as to prices of bonds.

Mr. Clark: Of course there is other data contained herein.

Mr. Welch: If you go beyond the taxable year I am not interested.

Mr. Clark: What do you mean "not interested"?

Mr. Welch: I don't want to clutter up the record with exhibits after the end of 1933.

Mr. Clark: I had understood it was agreed that this might go in as an exhibit.

Mr. Welch: I don't know what our difficulty is, Mr. Clark. I thought we had agreed that the quotations were true and if material, could be offered. I don't think quotations after 1933 are of any interest to us.

Mr. Clark: There, I will agree to, is dispute and that might be held in abeyance. That is the difficulty.

The Member: I think you both, in considering that question, must bear this in mind: It is a frequent dispute, and it is one about which the experience of the Board may be more useful than the lack of experience of counsel, and that is that if you have a dispute as to the admissibility of a particular piece of evidence on the ground that it is after the years in question, if we are going to exclude it on that ground, and if we are expected to exclude it on that ground, it is going to mean that everything after the taxable years in question are going to be irrelevant.

You can't put in, either of you, things that happen after the taxable years and exclude other things on the ground that they are irrelevant. You have got, both of you, to make up your minds now as to whether or not the Board may, in determining its findings of fact, rely upon or look to anything after the taxable years, or have got to close its eyes to everything after the taxable years, because if I let anything in at the instance of one side I am going to let it all in, and if I let it all in you have got to decide for yourselves your want this record to expand to the point that it will be necessary to expand it, to take in such matters.

I am only stating that as an admonition to both of you, for you to make up your minds as to whether you are go-

ing to object to this in the first place, or not? Take a position about it, and then the position will be adhered to, and I don't care very much which way it goes.

Mr. Clark: The testimony on the part of the Petitioner has already gone into the record relative to years other than 1933.

The Member: That was without objection. When testimony goes in without objection I am not called upon to do anything, but now we are at the threshold of a dispute, and I just want you to know that the terms of the resolution of that dispute are going to be at the outset. I am not making any ruling now. I am just warning both of you of what the danger in that position may be.

Mr. Welch: I realize it cuts both ways, but due to the fact we have an enormous quantity of material in the case, in any event, and because I think the proper stand for the Petitioner to take is to end his story with the end of the taxable year, I want to give notice now, Mr. Clark, I want to confine my testimony to the years in question.

Mr. Clark: Just a moment, Your Honor.

The Member: That is usually the Government's position.

(Counsel confer off the record.)

Mr Clark: I understand, Your Honor, that in a case called the Dill Manufacturing Company, with which I am not personally familiar, which is now pending before the Board, that testimony of this character of subsequent years was admitted in evidence over objection in order to show the ultimate disposition of the cash, and so I renew my offer of this exhibit for all years herein contained.

The Member: All I am saying is that if it is to be admitted over objection that the door is going to be regarded as pretty well open for both sides, over objection.

That is to say, I am not going to sustain an objection upon the ground that this is subsequent data when that ob-

jection is made by one side with regard to a specific thing, and then overrule the objection in another instance when it is made on the same ground. I am going to be consistent and I want you both to know I am going to be consistent, and when the door is open, the door is going to be pretty widely open, because I am not so concerned nearly so much with the accumulation or non-accumulation of matter in this record as I am to see to it that I conduct this hearing fairly to both sides, and if one side wants everything in that is after the event, the other side is entitled to have it in.

I am not going to make any meticulous distinctions in that respect.

Mr. Clark: With that position, I could take no quarrel and I think it is absolutely proper.

The Member: The reason I am saying it is that, very frequently, I find counsel thoughtlessly objecting to a little, picayune piece of evidence that they think should not be in there, and 10 minutes later insisting on something like this piece of evidence going in.

Bear in mind, now, what my attitude will be. It is the attitude of preserving the equilibrium.

Mr. Welch: Could I be allowed to say a word, if Your Honor please?

The Member: Yes.

Mr. Welch: I don't feel embarrassed or worried about the conversation that is going on except to this exhibit. I have had experts who are going to testify; they have had to prepare and work on a great deal of data and they have made some charts which I hope are of some use in showing what they are talking about, and because of the fact that the stipulation took us through 1923, and because of the fact I mean to offer no evidence beyond that year, all that mechanical work has been done on the basis of 1933, and it just happens to be practically impossible for me to

re-do some things that have been done that, you might say, are in print, and extend them two or three years.

In the past, I studied a good many cases, as Your Honor has stated, and the Government is inclined to close the door. I thought it would be quite simple if the Petitioner, for once, would end the testimony with the year in question. I supposed I could do so if I wished.

I only say to Your Honor if I can't do it, however, I wish I could, because I am going to be embarrassed with some charts that come to an end at the point I thought they should come to an end, which was 1933.

Mr. Clark: I renew the offer, Your Honor.

Mr. Welch: I don't think there is any point in having a battle about this little thing, but for the sake of the principle involved I think I will object and save my exception.

The Member: That necessitates my inquiring from counsel what is the theory upon which it is expected that the Board may look into the years subsequent to the years in question in order to decide whether section 104 is applicable during the years in question?

Mr. Clark: Yes, Your Honor. The reason is because of the insistence of Petitioner that this event is going to occur in 1940 which, as they state, will require a great expenditure of money on the part of the Maine Company; that the Maine Company will have to look after the situation of the New Jersey Company.

For that reason it is essential that we know what happened during the years, or what may happen during the years between 1933 and 1940.

Mr. Welch: Could I say a word at that point, Your Honor?

The Member: Yes.

Mr. Welch: The case, I take it, must be tried on the basis of what the officers of the Maine Company were do-

ing and thinking in the years 1930 to 1933 and what they reasonably might anticipate the future might be.

Let us assume, which is not at all the fact, but let us assume, if Your Honor wishes, that by, say, three years later the Government could show the Maine Company had four times what was needed to liquidate the Jersey Company. That would only go to show that four years later the Maine Company had liquidated the funds.

I want to try the case, as I had supposed I could, as best we can from the point of view what the men were doing at the time in question and as we well know there have been cases which the Board has decided, a 104 case against a taxpayer in one year and four in another year of the very series that were tried in a single hearing before Your Honors, so I can't see, if we assume Mr. Clark, in some magical way, could prove in 1934 we fearfully and unreasonably accumulated surplus, it would not be any evidence that we had made that grade and done that thing in the prior year.

The Member: I will overrule the objection.

Mr. Welch: I would like to save my exception.

The Member: Yes. As far as I can do so, I will say exceptions are allowed to the adverse party in all rulings.

You must decide for yourself, however, whether that is satisfactory to the Circuit Court of Appeals.

Mr. Welch: I probably will save my exceptions from time to time.

The Member: I understand that is the spirit of the new federal rules and we are to abide by it.

I just mention that for your information.

Mr. Welch: I am interested to hear Your Honor's expression of an opinion that the new federal rules are the opinion of this court, now.

The Member: They do not apply here. Technically, they

do not, but the Circuit Court of Appeals may get itself into the state of mind where it thinks it follows the new federal rules.

(The document so offered and received in evidence, was marked "Respondent's Exhibit B," and made a part of this record.)

X-Q. 133. (By Mr. Clark). My recollection, and I don't want to make any mistake in this regard, that Mr. Prince was concerned about the expiration of the charter of the New Jersey Company in 1940. A. Yes, sir.

X-Q. 134. Did he, or you, in his behalf, take any advice of counsel or inquire into the—well, as to whether the New Jersey charter might be amended, continued, or renewed in 1940? A. Yes, sir.

X-Q. 135. And what did you receive, as that advice? A. That it could be, under the laws, if the laws were complied with, that it could be extended.

X-Q. 136. You have spoken about instructions given by the Maine Company to the operating companies in Chicago during the years in question. How were those instructions given? A. Either in person or by telephone.

X-Q. 137. When you say "in person," you mean by yourself? A. Or Mr. Prince; yes, sir.

X-Q. 138. One or the other? A. One or the other; yes, sir.

X-Q. 139. Was any corporate action taken by the Maine Company in those occasions? A. If the occasion warranted.

X-Q. 140. Well, I say, was it taken? A. I couldn't tell you offhand.

X-Q. 141. Do you recall any instance in which it was taken? A. None offhand; no, sir.

Mr. Welch: I take it the question "corporate action" was

meant to indicate something in the nature of resolutions of board of directors.

The act, Mr. Clark, of any officer of a corporation is, of course, the act of the corporation.

Mr. Clark: That is for His Honor's construction under the facts in the case, it seems to me.

That is all, Mr. McDonough.

Redirect Examination.

Q. 142. (By Mr. Welch). In the last question when you were asked whether or not the Maine Company took any corporate action from time to time, what sort of corporate action did you understand the question to mean? *A.* Was there a meeting of the board of directors taken when each one of these transactions or things took place.

Mr. Welch: That is all.

(Witness excused.)

Mr. Welch: Mr. Donovan.

MR. JAMES F. DONOVAN

called as a witness by and on behalf of the Petitioner, and, having been first duly sworn, was examined and testified as follows:

Direct Examination.

Q. 1. (By Mr. Welch). What is your full name, sir? *A.* James F. Donovan.

Q. 2. And where do you live? *A.* Providence, R. I.

Q. 3. Were you sworn, just now? *A.* I was.

Q. 4. Are you associated with the Maine Company, the taxpayer in this case? *A.* I am.

Q. 5. In what capacity? *A.* I have charge of its books which are kept by me or under my direction, and I also have charge of the securities with another employee of the Chicago Stock Yards Company, and I take care of a great

deal of correspondence of the Chicago Stock Yards Company, and I am also assistant to Mr. McDonough, the vice-president.'

Q. 6. As assistant to Mr. McDonough, what are your duties? *A.* Well, in Mr. McDonough's absence, I have frequent telephone conversations with Chicago.

Q. 7. And I take it by "Chicago," you mean the men with the operating— *A.* I should say the operating men at the different companies in Chicago, and I go to Chicago, not very frequently, but once in a while.

Q. 8. Were the duties that you now have substantially, in the years 1930 to 1933, the same? *A.* They were with the exception that my assistance to Mr. McDonough was less.

Q. 9. How far back did your connection with the Maine Company go? *A.* About 1920.

Q. 10. Are you familiar with the transactions between the F. H. Prince & Company and F. H. Prince and the Maine Company from 1920 forward? *A.* I am, sir.

Q. 11. In the years 1930 to 1933, what was your connection with F. H. Prince & Company? *A.* I had charge of the books of F. H. Prince & Company and I had charge of valuing collateral on the loans with the bank loans, and also the loans with the Maine Company.

Q. 12. Anything in respect of the New York Stock Exchange in your charge? *A.* Yes, every 6 months F. H. Prince & Company has to make out a so-called questionnaire for the New York Exchange, and I have to prepare that, which includes valuing collateral, and, in fact, all of the assets with F. H. Prince & Company.

Q. 13. How far back does your connection with F. H. Prince & Company go? *A.* About 1918.

Q. 14. At about what time did you begin to be responsible for making entries in the books of F. H. Prince & Company? *A.* Oh, about 1920.

Q. 15. Between the years 1920 and 1933, did your duties with F. H. Prince & Company involve the evaluation of securities, in any way, other than the way you have just told us? A. Between 1920 and 1933?

Q. 16. Yes. A. I should say F. H. Prince & Company was an active brokerage business.

I mean by that a stock brokerage business and, of course, like all stock brokers, they maintained margin accounts, customers' rooms, board rooms, so-called, telegraphers, and in this I also either directly or assisted in valuing the margin accounts and the collateral which were pledged on F. H. Prince & Company loans; that is, customers' collateral and F. H. Prince & Company collateral, also.

Q. 17. Have you worked with counsel, I guess at both tables, in the preparation of the stipulation of facts? A. Yes, sir; I have.

Q. 18. On file in this case.

About how long were you engaged in—when did you begin that work? A. I should say about the first of August.

Q. 19. And have you worked fairly steadily from that time forward until very close to the time of trial? A. I have.

Q. 20. What did you do in connection with the stipulation over which six of us labored, as we did labor? A. Well, I assembled all of the legal documents, and assisted in preparing facts and figures to go into the stipulation.

Q. 21. Schedules and things of that sort? A. Schedules and different things that went in.

Q. 22. Is there anyone, Mr. Donovan, to your knowledge, who is more familiar with the details of transactions between F. H. Prince & Company and the Maine Company from 1929 even to the present day than you? A. I don't believe there is, sir, as to the details.

Q. 23. Would you tell us, Mr. Donovan, in a general way

what the activities of F. H. Prince & Company have been as you have observed them, say, from 1918 forward? A. Well, as I have previously testified, they were brokers, stock brokers, members of the Boston, New York, and Chicago Stock Exchanges, and they maintained a general brokerage business including margin accounts for numerous customers. This continued until, I should say, around 1927, when, upon instructions from Mr. Prince, the margin business was stopped and cut out. Mr. Prince said that no more margin accounts should be taken, and as a result of that we began to liquidate the so-called margin accounts and deliver the securities to the customers when they were released from bank loans.

Q. 24. Does F. H. Prince & Company any longer continue with ticker service? A. Well, F. H. Prince & Company continued its ticker service from 1927 until, I should say, about 1931 when even the tickers were removed from the office of F. H. Prince & Company.

Q. 25. Any board room now or anything of that sort? A. The board room was—I can't say taken out, but I mean began to be used as a clerk's room in 1931. What was the board room became a clerk's room.

Q. 26. What were the relations between the Maine Company and F. H. Prince & Company, let us say, from 1926 to '27? A. Well, the Maine Company had practically the same relationship as any other customer. They were on the books of F. H. Prince & Company as a customer with a debit balance. F. H. Prince & Company purchased securities for them the same as they would for any other customer, and there was interest charged on the debit balance.

Q. 27. Were brokerage commissions charged? A. Oh, in the purchase of securities, they are always charged.

Q. 28. How long did that relationship of broker and customer continue? A. Well, the relationship of broker and

customer continued up to the present time, but in 1922—yes, in 1922 the Chicago Stock Yards Company, or, at least, the Maine Company, in this case, they began to pay cash for their purchases of stocks and bonds, when they bought them.

Q. 29. Prior to that time they had not been paying cash for purchases? *A.* No, just sort of a margin account. At least it was an account that was secured by stocks and bonds.

Q. 30. In 1922 and prior thereto, what was F. H. Prince & Company buying for the account of the Maine Company? *A.* F. H. Prince & Company was buying New Jersey Company common and Maine Company 5 percent bonds.

Q. 31. Taking the New Jersey common, let us say, up until 1921, how many shares of it did F. H. Prince & Company purchase? *A.* Oh, in the neighborhood of 20,000 shares.

Q. 32. And at a cost of approximately what? *A.* About 3½ million dollars.

Q. 33. Now, after 1922, did the purchases of Jersey common continue? *A.* Yes, they still continued.

Q. 34. But on what basis as to whether cash was paid by the Maine Company or not? *A.* Well, the purchases continued, but when the purchases were made the Maine Company would give F. H. Prince & Company a check. They were cash, really.

Q. 35. Did F. H. Prince & Company make any purchases other than purchases of Jersey common for the Maine Company after 1927?

Mr. Clark: Your Honor, I am going to object to this because it seems to me as though this is matter for introduction of book records in substantiation.

Mr. Welch: We have the books in the courtroom.

Mr. Clark: Yes.

Mr. Welch: And he will testify presently to summaries from the books.

Mr. Clark: I see.

Mr. Welch: They are here for your examination at any moment, Mr. Clark.

Mr. Clark: Well, I think I would prefer to have that go in in the first instance by book records.

Mr. Welch: Much of this is just—you can't make sense out of it, Mr. Clark, without a witness explaining the books and using schedules.

Mr. Clark: I know, but he should have the books before him.

Mr. Welch: They are here. If you would be happier if he has them before him, they can be placed there now.

Mr. Clark: I would like to have Mr. King satisfied relative thereto. It is nothing of which I am familiar in detail, naturally, but I do think the witness should testify from the books and not.

Mr. Welch: The one I have to satisfy is His Honor. I am very happy to please Mr. King, but I have to prove my case in some way, Your Honor, and I don't think we will all be happy struggling around with books. I think Mr. King will be quick to tell you he has confidence in anything prepared by Mr. Donovan and myself as almost sure to be accurate.

Mr. Clark: Yes, Your Honor, but I think this ought to go in from the books in the first instance.

The Member: Well, the Respondent is entitled, of course, under the best evidence rule, to the primary records of transactions such as these.

Mr. Welch: I have those available, but—

Mr. Clark: What I was going to suggest, Your Honor, was that we have a recess for a few minutes during which time we may look at the books.

The Member: Oh, yes. If it can be done that way, we will suspend, then, for five or ten minutes.

(There was a short recess taken.)

Mr. Clark: We haven't quite finished conference as yet, Your Honor. It won't take but just a minute or two, I think. Petitioner has gone to get some books which they will bring down. May we have a moment or two more?

The Member: Yes.

Mr. Welch: Mr. Clark, could we confer at the bench a moment about it?

Mr. Clark: I don't see anything relative to it that we could confer about it.

The Member: We are not getting along rapidly. The question is whether you can get along without these books.

Mr. Clark: We have to see them first, Your Honor.

The Member: Where are they? That is what I thought you were conferring about.

Mr. Clark: Well, I understood that they were upstairs and would be brought down.

Is that correct?

Mr. Green: They are on the way down.

The Member: We will suspend the consideration and go to something else, then, if the books are necessary to be here. The Respondent is entitled to have the books, and if they are not here we will have to go on to something else until such adjustment is made of that requirement.

Mr. Welch: I would like to say at this point that with infinite labor we at this table have prepared this testimony in what we hoped was an orderly fashion, and we think we can put it in, certainly truthfully, and in an understandable way.

I will say, Mr. Clark, that if we have to wade through books entry by entry, I would suppose we would spend at least a week with this witness on the stand and come out

just where we would if we went ahead on schedules that you may check at any time and substitute other schedules for if you find ours inaccurate.

Mr. Clark: We are not going to wade through book entries entry by entry. His Honor is well aware of the way in which we always confer and spot check, and we won't have any difficulty, I am sure, if we have an opportunity to see the books and then go through in that fashion.

Mr. Welch: Thank you. Thank you.

Q. 36. (By Mr. Welch). Now, let's go slowly—

The Member: Now, as I understand it, the Petitioner is at least provisionally going ahead with this type of evidence upon the assurance that within the next few minutes the books themselves are going to be not only in the court room but open to Respondent's Counsel for checking as he goes along, and if my understanding is correct, then, you have had these books mutually before you now for a long time. There is no need to fear—certainly no need to fear deliberate inaccuracy, and not much need to fear inadvertent accuracy under those circumstances, but you are entitled to have these books here to check, but that is no reason why we should hold up the proceedings.

Mr. Clark: No, Your Honor, except that if this evidence runs into the record without our opportunity to check from the books in the meantime relative to it, and I will say frankly, so far as I am personally concerned, I am not familiar with the books. I have to depend on my associates in that regard but if we do that, how does the record stand?

The Member: Well, the record stands as all record stands, subject to your disclosing errors and inaccuracies on your cross-examination. It has never been true that the Petitioner couldn't put in his case because of the fear that some of the evidence that he puts in may be incorrect, because

that is what the province of cross-examination is, as I understand it.

Mr. Clark: I will have to object to any further testimony in this regard with the witness relative to what the books contain.

The Member: I think that you are not entitled to have that objection sustained, in view of the fact that Petitioner has made his plain offer, which I have no reason to doubt the honesty of, that he will have the books here within a few minutes, and from those books you are entitled to make a motion to strike or in any other way to protect yourself from inaccurate testimony which is not in conformity with the books. If it were not for the proffer of having them here within a very few minutes I should have another problem, but I haven't that problem.

Mr. Clark: Well, that is my understanding. They will be here in a few minutes; is that correct?

Mr. Welch: Not only that but I am going to turn to a type of general questions that I think will really obviate, at least for the moment, any such problem.

I will go slowly and I don't think I will run into anything that is going to bother you at all, Mr. Clark.

I would like the last question.

(The question was read as follows:

"Q. Did F. H. Prince & Company make any purchases other than purchases of Jersey common for the Maine Company after 1927?")

Mr. Clark: "For the Maine Company" is what I am interested in, and I object to the question, because I think the books should be here in order to show whether those purchases were made.

The Member: The objection is overruled.

Mr. Clark: Exception.

I understand it isn't necessary to take an exception?

The Member: As far as I am concerned, it isn't. Don't ask me to speak for Judges Bingham, Wilson, and McClellan.

The Witness: Would you please read the question?

The Member: Does this record show where the return was filed so that we may know the venue for an appeal? I mean, does the stipulation contain that?

Mr. Welch: Now and then I have heard that discussed as to the possible circuit court that we would go to if we went there, and I just don't know the answer.

The Member: Well, see that the record does contain it at some time. It doesn't matter now.

Mr. Welch: The returns are finally going in, so that will settle it.

Will you read the last question?

(Question again read.)

Q. 37. (By Mr. Welch). You can answer that just "yes" or "no," I think. *A.* It isn't quite clear to me. I am awfully sorry.

The Member: Well, restate the question.

Suppose you put the question again. It isn't clear to the witness.

Mr. Welch: I think I will pass it and go ahead to further points in the testimony that I want to bring out.

Q. 38. (By Mr. Welch). Let's turn to the years 1930 to 1933, and tell us during those years what were the business activities of F. H. Prince & Company. *A.* Well, as I previously testified, F. H. Prince & Company practically closed up its business in 1931 with the exceptions of a cash business, and after '31—that is, '31, '32, and '33—they only had, oh, four or five customers, three or four of them being Boston banks in which the Maine Company had the major portion of their deposits, and the Maine Company, itself, was a customer.

Q. 39. Can you give us some examples of the sort of things done by F. H. Prince & Company at the request of the Maine Company other than executing mere orders for purchases during those years? *A.* The years '30 to '33?

Q. 40. Yes. *A.* Well, in 1931 F. H. Prince & Company purchased—I beg your pardon. I don't mean "purchased," but—yes, they did. They purchased accounts and notes of the Central Manufacturing District Bank in Chicago in their own name, and they were so carried for the account of the Maine Company with funds furnished by the Maine Company.

In 1932, I believe it was, they subscribed to—F. H. Prince & Company subscribed to 50 shares of Pan Corporation stock, which was carried in the name of F. H. Prince & Company for the benefit of the Maine Company.

Q. 41. In 1933, did F. H. Prince & Company buy some Armour stock with money supplied by the Maine Company? *A.* Yes, in 1933 F. H. Prince & Company purchased a little bit over a million dollars of the Armour & Company stock with funds furnished by the Maine Company.

Q. 42. You say "funds furnished"; was that furnished— *A.* Furnished in the form of bonds.

Mr. Clark: All this, Your Honor, runs so much in the line to which I have been objecting, that I hate to have it go into the record at this time.

The Member: I am afraid you can't help it. If an objection were made I would have to overrule it.

Mr. Clark: I will make another objection.

The Member: I will overrule it.

Mr. Clark: And I will take an exception, if it may be granted.

Mr. Welch: Would you read the last question and answer?

(Last question and answer read.)

The Witness: I would like to explain that answer more fully.

A. F. H. Prince & Company purchased about a million dollars of Armour & Company stock. They paid for it with funds furnished in the form of notes. In other words, they borrowed money from the Maine Company to pay for these shares of stock.

Q. 43. (By Mr. Welch). During this same period was F. H. Prince & Company active in any way about acquiring stock in the Jersey Company? *A.* Yes, F. H. Prince & Company continued to purchase stock in the New Jersey Company for the Maine Company.

Q. 44. Was it particularly active in locating stock for purchase, or anything of that sort? *A.* Well, not so very active because the amount of outstanding shares decreased considerably. It did a tremendous amount of work in trying to locate these shares; buying some shares, of course.

Q. 45. Was the purchase of Jersey common a new activity for F. H. Prince & Company in 1930 to 1933, or had it been going on before? *A.* It had been going on before 1918 — well, at least since 1918, since I was there.

Mr. Welch: Would somebody supply the witness, please, with a copy of S-65, S-66, and S-67?

(A bound volume of documents was handed to the witness.)

Q. 46. (By Mr. Welch). Have you, at my request, examined these schedules S-65, S-66, and S-67, in preparation for your testimony here? *A.* I did.

Q. 47. Are you personally familiar with the transactions that are represented in those schedules? *A.* I am from 1920 on.

Q. 48. Did you have anything to do with the book entries that lie behind these schedules that we have here? *A.* I

did. I either made them or directed how they should be made.

Q. 49. Now, looking at S-65, do you find an item there of $3,433,694.35 as due F. H. Prince & Company on December 31, 1918? *A.* I do.

Q. 50. Can you tell us from the bottom of that sheet, if you need it, what that item is? *A.* I can.

Q. 51. Will you do so? *A.* This represents the amount paid by the Maine Company of the following securities:

17,929 shares of New Jersey common at a cost of $3,190,339.96.

286,000 Maine Company 5 percent bonds, $243,354.39.

Totals cost of $3,433,694.35.

Q. 52. Was this a payment by the Maine Company or a charge to it, on the books? *A.* This was a charge.

Q. 53. Now, will you look at the year 1921 when there is a decrease in the balance in that account from $3,362,234.13 to $1,712,441.52, and ask you if you can explain the transactions that go into causing that decrease and how the decrease came about? *A.* I can.

Q. 54. Will you do so? *A.* I will first explain how the account works.

In this account is charged purchase of securities and interest charges, regular interest charges, as in any open account.

The account is credited with dividends on any shares that are in the account. In this particular case the 17,929 shares.

Also with the bond interest, coupon bond interest on any bonds that were long in the account.

Q. 55. That were "long in the account"? *A.* Long in the account. That is the ordinary principal.

The account is also credited with any payments of cash or any other payments. In this particular instance, the Chicago Stock Yards Company, or Maine Company, turned

over to F. H. Prince & Company in November of 1921 1,500,000 Maine Company 7 percent debenture bonds.

They were received by F. H. Prince & Company and credited in this account at their par value, namely, $1,500,000

This caused a reduction in the account to $1,712,441.52 as shown on this S-65.

Q. 56. Now, will you glance for me for a moment at S-62. Do you have that before you, Mr. Donovan? *A.* Yes.

Q. 57. And do you notice there in the year 1921 the Maine Company bought $26,000 face value of its 5 percent bonds for $14,673.74. *A.* I see that.

Q. 58. Can you tell us whether or not F. H. Prince & Company had anything to do with the purchase of those bonds? *A.* Oh, yes, F. H. Prince & Company purchased them for the Maine Company.

Q. 59. Do you know how they were bought? *A.* In the open market.

Q. 60. And now will you tell us the average cost per bond of the bonds purchased during that year? *A.* About $565 for a thousand dollar bond.

Q. 61. How were these 5 percent bonds of the Maine Company secured? *A.* There were five shares of New Jersey Company common pledged behind each $1,000 Maine Company 5 percent bond.

Q. 62. How was the $1,500,000 worth of 7 percent Maine debentures, which you testified the F. H. Prince & Company took in at their face value, secured? *A.* There was no security behind those outside of the credit of the company.

Q. 63. Then do I gather from your testimony, Mr. Donovan, that at the same time F. H. Prince & Company accepted the $1,500,000 unsecured debentures of the Maine Company at par value in partial payment of a debt of the Maine Company to the F. H. Prince & Company, they were actually

buying secured bonds of the same company in the open market at about 56½? A. That is correct.

Q. 64. Now, Mr. Donovan, turn your attention to that account in 1922, will you, please? A. What account is that?

Q. 65. This schedule, which is S-62. I am unhappily without a copy of it before me.

The Member: I am sorry to interrupt this again, but I am greatly concerned about the fact that the stipulation exhibits are so frequently in carbon copies, which is not in conformity with the rules, and is very inconvenient—where are the originals and why are they not here?

Mr. Green: I think it is the one that the witness has.

Mr. Welch: I think you have got the spare tire, so to speak.

The Member: Which is the one officially in evidence?

Mr. Welch: The one the witness has.

The Member: I don't care, as far as reading it is concerned. I just want to be sure the official copy is an original and not a carbon.

Mr. Welch: It is an original, Your Honor.

The Member: Very well.

Q. 66. (By Mr. Welch). I am now directing your attention, Mr. Donovan, again to S-65, and I observe, I think that from this schedule the amount due on the open account from the Maine Company to F. H. Prince & Company decreased from $1,712,441.52 to $717,001.28 during that year, and it also appears that there was no longer due at the end of that year anything from the Maine Company to F. H. Prince & Company represented by the 7 percent debentures.

Will you tell us what the transactions were which resulted in these changes in this account? A. Well, they were the usual debits and credits that I mentioned previously consisting of credits in the form of dividends on stock and also

in the form of bond coupons and charging the accounts for interest on the open account.

Besides that, in June of 1922 the Chicago Stock Yards Company, or the Maine Company, delivered to F. H. Prince & Company $2,000,000 of Maine Company's 7 percent debenture bonds in payment for the one million and a half of them to be accepted in payment of the $1,500,000 previously issued in 1921.

The additional $500,000 was credited to this account.

Besides this $500,000 in bonds, the Maine Company also paid F. H. Prince & Company $300,000 in cash, which also was credited to the account.

Q. 67. Although you have told us that F. H. Prince & Company received $2,000,000 in 7 percent debentures of the Maine Company during the year 1922, there nowhere appears in this schedule anything to indicate that the Maine Company was indebted to F. H. Prince & Company in the amount of $2,000,000 represented by these new debentures; is that true? A. That is correct.

Q. 68. What is the explanation of that? A. Well, in June of 1922 these $2,000,000 worth of Maine Company's 7 percent debentures, together with the $300,000 in cash that I previously mentioned, they were turned over to F. H. Prince personally to be used in payment of the 15,520 shares of Maine Company common stock which Mr. Prince purchased from Mr. J. Ogden Armour.

Q. 69. In that year? A. In June of 1922.

Q. 70. Now, would you turn to the stipulation itself. Have you that before you? A. No, I haven't.

Q. 71. I beg your pardon.

(A copy of the stipulation was handed to the witness.)

Q. 72. Will you look at the bottom of page 30 and the top of page 31 and tell us whether or not the transaction you have just described is the one mentioned in the para-

graph beginning in parenthesis (a) at the bottom of page 30? A. Yes, that is the transaction.

Mr. Welch: I think perhaps it will be making the record clearer for anyone reading it if you will read that portion of the stipulation at this time.

The Witness: Beginning at "(a)"?

Q. 73. (By Mr. Welch). Beginning with the paragraph "At the time—." A. "At the time when F. H. Prince acquired the 15,520 shares of Maine Company stock, from J. Ogden Armour or Armour & Company, J. Ogden Armour or Armour & Company received the following:

"(a) From F. H. Prince, $300,000 in cash and $2,000,000 in bonds of the Maine Company issued under the indenture attached hereto marked S-50, which bonds, F. H. Prince received from F. H. Prince & Company. Said bonds were reacquired by the Maine Company from J. Ogden Armour or Armour & Company in December of that year for $1,860,000."

Q. 74. On page 31 of the stipulation, do you see a reference to a decree? A. I do.

Q. 75. Have you that decree or has Mr. Green that decree?

Mr. Green: I have it.

Mr. Welch: This, Mr. Clark, was the decree under which Mr. Armour was ordered to dispose of his stock in the Maine Company, and it is an official certified copy, and I want to offer it, if I may.

The Member: Is that, by the way, the famous consent decree?

Mr. Welch: It is.

Mr. Green: In the so-called "Packers Case."

The Member: Another thing, while this is going on: Throughout the exhibit I notice references made at one place or another to F. H. Prince & Company, Inc. There

are other references which have been made throughout the trial to F. H. Prince & Company, which was described by counsel as an unincorporated—let me, for short, call it an organization—although it was apparently described as not being even that.

I want to be sure that throughout the record we can rely upon counsel and the witnesses to see to it that whenever F. H. Prince & Company, Inc., is referred to, that the fact will be made clearer that there will be no confusion about F. H. Prince & Company, which is the unincorporated whatever—and F. H. Prince & Company, Inc., which is the corporation.

It is a very easy thing for counsel to slip up on, and I hope you will make it clear when you are referring to that.

Am I correct in believing that the corporation of that name, namely, the "Inc." is the one which will be only rarely referred to?

Mr. Welch: That is correct.

The Member: So that it is easier, as a matter of mechanics, to be sure that whenever you mean that corporation you will expressly say so, and that when that corporation is not expressly referred to you mean we may take it that you are referring only to the name F. H. Prince & Company, which is not incorporated. If that can be clearly understood, the record will be free from confusion.

Mr. Welch: There is, I take it, no objection to this document, Mr. Clark.

Mr. Clark: No objection.

(The document so offered and received in evidence, was marked "Petitioner's Exhibit 23," and made a part of this record.)

Mr. Welch: That is to be described in the record as the decree of February 27, 1920, in the so-called "Packers Case"; that is probably sufficient identification.

I will read paragraph 10, with Your Honor's permission, not from the actual exhibit but from a printed copy which I am confident is accurate. It is much easier to read from this copy.

Paragraph tenth of Exhibit 23 is as follows:

Tenth. That within ninety days after the entry of this decree such of the defendants as have interests in public stock yard market companies, stock yard terminal railroads, or market newspapers, shall file in this court, for the court's approval, a plan or plans for divesting themselves of all ownership or interest in: (1) public stock yard market companies; (2) stock yard terminal railroads; (3) market newspapers; provided, however, that the court may, in the event that it deems such provision necessary in order to enable the defendants to divest themselves of their interests in public stock yard market companies and stock yard terminal railroads, upon reasonable terms, permit the individual defendants, or some of them, to retain an interest by way of stock ownership, or otherwise, in any public stock yard market company or stock yard terminal railroad, or in any corporation organized to take over such public stock yard market companies or stock yard terminal railroads or the stock thereof; but no defendant or defendants shall at any time, either individually or jointly, own a controlling interest in any stock yards or stock yard terminal railroads. Within such period of time after the entry of this decree and the approval of said plan or plans as the court may determine, the defendants shall, in good faith, completely divest themselves of all such ownership or interests in public stock yard market companies, stock yard terminal railroads, and market newspapers. If, within the time so fixed, the defendants shall not have disposed of said interests ordered by the court to be disposed of, and the court upon application shall determine that the defendants have been unable,

despite due diligence, to dispose of the same upon reasonable terms, the court may extend the time during which such ownership, control, or interest may continue until the same can be disposed of."

Q. 76. (By Mr. Welch). Will you look at page 28 of the stipulation for a moment, Mr. Donovan, and tell me whether or not the $1,500,000 of debentures issued by the Maine Company on October 15, 1921, are the debentures which you referred to in your testimony with reference to the year 1921? A. They are.

Q. 77. And, once more, the debentures of $2,000,000 face value issued on June 1, 1922; are those the debentures which you referred to in connection with your testimony with that year 1922? A. They are.

Q. 78. Now, Mr. Donovan, let me call your attention to the transactions between F. H. Prince & Company and the Maine Company during the years 1923, 1924, 1925, and 1926, directing your attention to the open account and the demand notes, and, naturally, also directing your attention to S-65, and will you please state to us what transactions occurred between the Maine Company and F. H. Prince & Company during those years, that are reflected in that schedule? A. 1923 to 1926?

Q. 79. Yes. A. Well, to begin with, in 1923 F. H. Prince & Company borrowed from the Maine Company $25,000, which was repaid in 1924. That was the only borrowing of funds during those years.

The open account of the Maine Company in the books of the F. H. Prince & Company, this account continued to be credited with the dividends, bond interest, and, of course, charged interests on the debit balance until at the end of 1926 the account had decreased from a debit balance at the beginning of 1923 of $717,001.28 to a credit balance due to the Maine Company of $187,867.08. This made a total in

debtedness to the Maine Company of notes and open account of $947,867.08.

Q. 80. Well, during these years 1923 to 1926, was F. H. Prince & Company continuing to purchase New Jersey common stock for the account of the Maine Company? *A.* They still continued to purchase them, the New Jersey common stock.

Q. 81. Now, are those purchases reflected in this open account? *A.* No, because the purchases were made and charged to the account, and the Chicago Stock Yards Company gave F. H. Prince & Company cash to pay for them.

Q. 82. Now, you testified, I think, that in 1927, F. H. Prince & Company inaugurated a new policy about margin accounts.

Have you so testified? *A.* I have so testified.

Q. 83. What was that new policy? *A.* Well, no more margin accounts were to be opened, and all those accounts were to be cleaned up.

Q. 84. As a consequence of that change, what, if anything, was done about old accounts? *A.* The old accounts were closed out by F. H. Prince & Company; that is, the customers paid their unpaid balances and took them up.

Q. 85. Was an examination of all accounts in the office of F. H. Prince & Company made at that time? *A.* Oh, yes, sir; a thorough investigation of all accounts was made in 1927.

Q. 86. And as a consequence, was something done to all accounts? *A.* Yes. There was a general clean-up of the whole business in 1927.

Q. 87. Well, now, in connection with that general clean-up, was anything done about the account with the Maine Company? *A.* Yes, there was.

Q. 88. Will you tell us what was done with that account, taking the stipulation and the exhibits before you and go-

ving as slowly and as carefully as need be to explain what was then done with the account of the Maine Company? A. Well, the Maine Company—well, to begin with, Mr. Prince, personally, borrowed from the Maine Company $1,200,000 and 11,000 shares of New Jersey Company common, and $150,000 of Maine Company 5 percent bonds. He put up as collateral for that 15,000 shares of Chicago Stock Yards Company common, or the Maine Company.

Q. 89. When you say he put up as collateral for that, you mean he put up with the Maine Company? A. Oh, he put up with the Maine Company. He did this personally with the Maine Company.

Q. 90. O. K. Go ahead. A. Mr. Prince then took the $1,200,000 and turned it over to F. H. Prince & Company. F. H. Prince & Company then paid off the balance that was due to the Maine Company in the form of notes; namely, $760,000, and an unpaid balance which was the credit balance I previously speak about of $422,000 and some odd, making a total payment to the Maine Company of about $1,182,318.38.

Q. 91. On that payment what happened to the obligations of F. H. Prince & Company to the Maine Company? A. Well, that cleaned up any notes or any open account that F. H. Prince & Company owed to the Maine Company.

Q. 92. Did Mr. Prince actually receive any Jersey Company shares of Maine Company bonds at that time? A. No. Mr. Prince didn't actually receive them, for this reason: F. H. Prince & Company had the shares pledged on all of their outstanding bank loans.

Q. 93. By the term "these shares," you mean what? A. There were—

Q. 94. I mean to ask— A. The shares were the New Jersey Company common shares.

Q. 95. Yes. A. And there was, oh, around 11,000 of these shares pledged on bank loans, and 50,000 of the Chicago

Stock Yards 5 percent bonds pledged on F. H. Prince & Company bank loans.

Q. 96. Yes. *A.* Now, we couldn't physically return the New Jersey Company stock over to the Maine Company, so Mr. Prince took over the obligation to return them to the Maine Company, but we did—F. H. Prince & Company did return to the Maine Company the difference between the 11,000 Mr. Prince borrowed and 14,755 which was long in that account at that particular time. So they returned 3755 shares of the common stock, New Jersey Common stock, and 22,000 Maine Company 5 percent bonds.

Q. 97. Then what was the situation as to what Prince & Company was to do with Jersey common as its bank loans were paid? *A.* Well, as F. H. Prince & Company then paid off bank loans in the future in which Jersey Company common was pledged, they sort of made an agreement with Mr. Prince to return it to him so that he could return it to the Maine Company.

Q. 98. Now, what was the result of this transaction as far as F. H. Prince & Company was concerned? *A.* Well, it wiped out any obligations we might—I mean, it wiped out any obligations that F. H. Prince & Company might have to the Maine Company.

Q. 99. And created an obligation of F. H. Prince, personally? *A.* It created an obligation of Mr. Prince, personally, to the Maine Company.

Q. 100. What effect did this transaction have on the financial statement of F. H. Prince & Company? *A.* Well, of course, it helped the financial statement of F. H. Prince & Company because it discharged the debt of $1,200,000, and it became a debt of Mr. Prince, personally.

Q. 101. Did it have any effect on the cash position of F. H. Prince & Company? *A.* No, because it was in and out.

Q. 102. Now, have you described all the transactions in

this year as between F. H. Prince & Company and the Maine Company which appear on S-65? A. Well, in December of 1927, F. H. Prince & Company borrowed $400,000 from the Maine Company. That is the only other transaction.

Q. 103. Did that loan have anything to do with the purchase of Jersey common or Maine bonds? A. No, no.

Q. 104. Was that loan secured? A. It was.

Q. 105. How? A. It was secured with bonds that were listed on the Boston Stock Exchange.

Q. 106. Now, from 1927 forward, Mr. Donovan, have there been other borrowings by F. H. Prince & Company from the Maine Company? A. Oh, yes, as shown in this stipulation.

Q. 107. S-65? A. S-65.

Q. 108. From that year on, has there always been collateral deposited against such borrowings? A. Yes, there has been.

Q. 109. You testified a few minutes ago that Mr. Prince borrowed $1,200,000 from the Maine Company in 1927, and that he deposited 15,000 shares of stock of the Maine Company as collateral for that loan and for securities which he borrowed; did you not? A. I did.

Q. 110. From 1927 on have there been other loans by the Maine Company to Mr. Prince as appears on S-65? A. Yes, there were other loans in 1932 and '33.

Q. 111. Now, have those loans at all times had collateral deposited to secure them? A. Yes.

Q. 112. Have you prepared from the books and records in your charge a schedule of the collateral deposited by F. H. Prince & Company and F. H. Prince from year to year beginning at the end of 1927 to December 31, 1933, showing the collateral deposited with the Maine Company by F. H. Prince & Company and F. H. Prince to secure loans made by the Maine Company? A. I have prepared such schedules.

Q. 113. And are those schedules with you or with me?

Mr. Welch: Have you seen these schedules, Mr. King, of the collateral?

Mr. King: No.

Mr. Welch: Then I should say as to these schedules which I am confident of their accuracy, they ought to go in under the provision that Mr. King may at any time check them, and, well, I don't just know quite what to say, because I know they are so accurate. You may check them and substitute other schedules if these are incorrect.

Mr. King: That is all right.

Mr. Clark: No objection.

Mr. Welch: I should like to mark these schedules of collateral beginning as of December 31, 1922, and ending as of December 31, 1933, as a single exhibit subject to the statement in respect of them which I have just made. Again they are loosely fastened and will be more securely fastened before the evidence closes.

The Member: State in the record how many pages.

Mr. Welch: Mr. Green is allergic to that idea.

Mr. Green: They consist of 12 pages.

The Clerk: Petitioner's Exhibit No. 24.

Mr. Welch: Is the exhibit that consists of 12 pages.

(The document, consisting of 12 pages, so offered and received in evidence, was marked "Petitioner's Exhibit 24," and made a part of this record.)

Q. 114. (By Mr. Welch): Have you in that schedule which has just been introduced in evidence placed values upon the collateral, Mr. Donovan? A. I have.

Q. 115. Upon what basis? A. I valued the collateral at the market value, bid price in each instance, at the end of whatever particular year was called for, and with the exceptions of Chicago Stock Yards Company or the Maine Company common stock, which I valued at its book value in

accordance with the figures that the balance sheet contains in the stipulation.

Q. 116. I take it, there have been no sales of stock of the Maine Company common at any time since Mr. Armour's stock was purchased in '22? *A.* No.

Q. 117. Now, let me ask you this: Has interest on the loans from the Maine Company to F. H. Prince & Company and F. H. Prince been paid from year to year? *A.* Yes.

Q. 118. And how often? *A.* It has been paid monthly by check.

Q. 119. And at what rate? *A.* Four percent.

Q. 120. Would you glance at S-68 for a moment and tell us the amounts of interest that have been paid by F. H. Prince and F. H. Prince & Company to the Maine Company on these loans from 1923 through December 31, 1933? *A.* $1,331,149.64.

Q. 121. Did the Maine Company have substantial sums of money on deposit in banks from 1930 to 1933? *A.* They did.

Q. 122. Can you tell us the rate of interest received by the Maine Company on its bank deposits through those years? *A.* In 1930, they received interest at the rate of 3 percent for the first six months, 2½ percent for the last 6 months; in 1931, the interest rate was 2½ percent for the first 6 months and 2 percent for the last 6 months; in 1932 the interest rate was 2 percent for the whole year, and in 1933 it was 1½ percent to July 1, when they stopped paying interest on ordinary commercial deposits.

Q. 123. Have the personal borrowings of Mr. Prince from the Maine Company in each instance, or every instance, been turned over to F. H. Prince & Company for use in its business? *A.* They have with the single exception of $160,000, which was borrowed in 1932 by Mr. Prince.

Q. 124. And what was that used for? *A.* That was used to purchase Mr. Prince's Newport house.

Q. 125. In Newport, R. I.? A. In Newport, R. I.

Mr. Welch: I have in the courtroom the originals of the notes from F. H. Prince and F. H. Prince & Company to the Maine Company or such of them, to be more accurate, as were outstanding at the end of 1933, and which were unpaid and are still unpaid, and I want to offer those notes, preferring, however, actually, to put in evidence photostats as against the originals, the photostats now being offered to Mr. Clark for comparison.

The Member: The comparison does not need to be made now.

Mr. Welch: I think you are quite right.

The Member: The originals are here.

The photostats can be offered, and if there is no objection on other grounds, they will be received, and verified at a more convenient time.

Is there any objection, Mr. Clark?

Mr. Clark: I would like to ask the purpose of this offer?

Mr. Welch: Well, we are naturally in this case, I take it—we are going to argue at some time about these loans, and I wish to show the notes supporting the loans, the fact that they are collateral in form, and that the note for $160,000 for the Newport house is in quite a different form than the others.

Mr. Clark: I have no objection.

The Member: They are received. Let the photostatic copies be received in evidence.

Mr. Welch: Mr. Green, would you be happier if they were marked one by one?

Mr. Green: I think so. They are then easy to keep track of.

Mr. Clark: Of course, Your Honor, we may have the opportunity to check.

Mr. Welch: Oh, indeed.

The Member: Unquestionably; you have the originals, I understand. They have been tendered to you.

Mr. Clark: That is true.

The Member: And copies are in evidence, and if there is any inaccuracy that you think the record should show, you will always have the opportunity to make that suggestion.

Mr. Welch: What is your next exhibit number?

The Clerk: Twenty-five.

Mr. Welch: I offer as Exhibit 25 a note of F. H. Prince to Chicago Stock Yards Company, dated November 14, 1927, or, to be more accurate, a photostat of the note; as Exhibit 26, a similar note dated January 19, 1933; as Exhibit 27, a similar note dated January 28, 1932.

I thought I had them in chronological order, but I don't think it matters. I will put the rest in chronological order.

As 28, a note of F. H. Prince & Company to Chicago Stock Yards Company, dated November 1, 1930;

As Exhibit 29, a note of F. H. Prince to Chicago Stock Yards, dated August 16, 1932;

As Exhibit 30, a note of F. H. Prince & Company to Chicago Stock Yards Company, dated August 22, 1932;

As Exhibit 31, a note of F. H. Prince & Company to Chicago Stock Yards Company, dated August 7, 1932;

As Exhibit 32, a note of F. H. Prince & Company to Chicago Stock Yards Company, dated August 30, 1933;

And as Exhibit 33, a note of F. H. Prince & Company to Chicago Stock Yards Company, dated October 31, 1933.

(The documents so offered and received in evidence were marked "Petitioner's Exhibits 25, 26, 27, 28, 29, 30, 31, 32, and 33," and made a part of this record.)

Q. 126. (By Mr. Welch). I ask you, Mr. Donovan, to look at the Exhibits 25 to 33, inclusive, and, particularly, at the signatures, and tell me whether they are all in the same handwriting. A. No, they are not.

Q. 127. Are there any of the notes that are in the handwriting of Mr. F. H. Prince, meaning by the handwriting the signatures? *A.* These two here are in the handwriting of Mr. Prince.

Q. 128. The numbers being what? *A.* Nos. 29 and 25.

Q. 129. And Exhibit 25 is the note of November 14, 1927, in the sum of $1,200,000? *A.* That is correct.

Q. 130. And Exhibit 29 is the note of August 16, 1932, in the sum of $160,000? *A.* That is correct.

Q. 131. Is the form on which the note, Exhibit 29, in the sum of $160,000, different from the other forms? *A.* Yes, it is.

Q. 132. The others being what form? *A.* Well, the others seem to be the ordinary and usual collateral note form.

Q. 133. And Exhibit 29 a simple note? *A.* A simple note form.

Q. 134. You have testified, I think, Mr. Donovan, that for some years F. H. Prince & Company was buying New Jersey common for the Maine Company as it would for any other customer? *A.* That is right.

Q. 135. During that period when it was buying and there were balances due from the Maine Company to F. H. Prince & Company, was interest charged by F. H. Prince & Company? Do you understand the question? *A.* No.

Q. 136. During the period of time when there were any balances due from the Maine Company to F. H. Prince & Company, was interest charged the Maine Company on the balances due? *A.* Oh, yes, always.

Q. 137. Did that situation of debit balances against the Maine Company and interest charges thereon continue down to 1927? *A.* Yes, it did.

Q. 138. Now, prior to the purchase for cash by the Maine Company, when F. H. Prince & Company bought Jersey common for the Maine Company, did it deliver the stock to

the Maine Company? A. No, it always kept it on the account.

Q. 139. And what did F. H. Prince & Company do with the shares not delivered to the Maine Company? A. Well, they used them to pledge on bank loans when they borrowed money.

Q. 140. Would they be used in conjunction with other collateral of other customers on bank loans? A. Oh, yes. They would pledge in an ordinary loan that of Jersey Company common and some stock that was owned by a customer and maybe some stock owned by F. H. Prince & Company.

Q. 141. Was that a regular custom of borrowing as brokers always do? A. Yes, the broker has the right to apothecate securities.

Q. 142. Now, have you prepared a schedule showing the amount of New Jersey Company common which F. H. Prince & Company had purchased for the account of the Maine Company which was pledged with banks upon different bank loans of F. H. Prince & Company from the year beginning with 1922 and continuing to 1933? A. I have.

Mr. Welch: This schedule, as others, I think, should be subject to check by Mr. King, or the Government attorneys, it being, as I understand, Mr. Clark, admitted in evidence such to Mr. King's right to check.

Mr. Clark: I have no objection.

The Clerk: Exhibit No. 34.

(The document so offered and received in evidence was marked "Petitioner's Exhibit 34," and made a part of this record.)

Q. 143. (By Mr. Welch). Will you take that in the event you want to use it (handing Exhibit 34 to the witness).

Have you included in the schedule which has just been marked in evidence the amount of the bank loans against

which the total amount of shares pledged were in fact pledged? A. I have.

Q. 144. And has the record been prepared from books and records which you have with you in the court room so that the Government may check? A. They have.

Q. 145. If they wish.

Was the money borrowed by F. H. Prince & Company represented by the bank loans, which is Exhibit— A. Thirty-four.

Q. 146. —borrowed from one bank or more than one bank? A. It was borrowed from many banks.

Q. 147. Was the collateral which appears on the schedule, Exhibit 34, all pledged at one bank or at different banks? A. No, it was pledged in practically every bank loan we had.

Q. 148. What collateral other than these Jersey shares appearing in Exhibit 34 was pledged on these different bank loans? A. Well, some collateral loans by F. H. Prince & Company and other collateral by customers—of course, prior to 1927, when we gave up our margin business, there was considerable collateral, considerable securities owned by customers on unpaid balances, and that was pledged as collateral on bank loans.

Q. 149. Now, will you tell us, Mr. Donovan, from the exhibits we have introduced, and the books and records, and the situation which you have before you, how these loans from the Maine Company to F. H. Prince and F. H. Prince & Company, with the exception of this $160,000 you have talked about, came about? A. Well, they came about in three ways: Due to the purchase long and continued purchases, I might say, of the New Jersey Company common and the Maine Company 5 percent bonds in the open market, in which F. H. Prince & Company had to borrow money to finance, and which they did borrow, and due to the purchase of Mr. J. Ogden Armour's interest in the Maine Company

and later due to the purchase by F. H. Prince & Company of the interest in the Armour & Company stock in 1933, which amounted to over a million dollars.

Mr. Welch: Will you pardon me a moment?

(Pause.)

Mr. Welch: Could I have that answer?

(Answer read.)

Q. 150. (By Mr. Welch). That is, as I understand it, in a general way the explanation of the source of those loans, Mr. Donovan? A. That is correct, Mr. Welch.

Q. 151. Now, in 1922, when the $2,300,000, $2,000,000 in bonds and $300,000 in cash was made by the Maine Company to F. H. Prince & Company, what was the effect of that situation as to F. H. Prince & Company's working capital? What was the result of the payment? A. Well, it didn't help F. H. Prince & Company's working capital at all, because, in fact, it hurt it in a certain sense, because the bonds and cash were delivered to Mr. Prince. It didn't help F. H. Prince & Company.

The Member: We will suspend until a quarter after two.

(Whereupon, at 12:45 o'clock p. m., a recess was taken until 2:15 o'clock p. m. of the same day.)

AFTERNOON SESSION.

The Division resumed hearings at 2:15 o'clock p. m.; whereupon, the following proceedings were had:

The Member: You may proceed.

Mr. Welch: If Your Honor please, I would like to continue for just a very few questions with Mr. Donovan before we interrupt, as I suggested we would.

Will you continue for a little bit, Mr. Donovan?

MR. JAMES F. DONOVAN

having heretofore been first duly sworn, was recalled to the stand, and was examined and testified as follows:

Direct Examination (Continued).

Mr. Clark: Wait just a moment. Are you going to finish with Mr. Donovan at this time?

Mr. Welch: I don't think so. I just want to run through a little bit more of the preliminary matter preliminary to Mr. Prince's taking the stand.

Mr. Prince is in the courtroom.

Mr. Clark: But Mr. Donovan will be back again?

Mr. Welch: Oh, indeed; yes. He will be back and offered for cross-examination.

Q. 152. (By Mr. Welch). Mr. Donovan, have you still S-67 before you? A. Is that S-67, Mr. Welch?

Q. 153. Have you been working from S-65 or S-67? A. S-65.

Q. 154. With that S-65, the exhibit from the stipulation, before you, would you take a moment to trace through it for us the transactions that have resulted in the loans from the Maine Company to F. H. Prince & Company and F. H. Prince? A. Yes, sir.

Q. 155. I think you might begin back in 1921, if you will. A. At the end of 1920, or January 1, 1921, the Maine Company owed F. H. Prince & Company $3,362,234.13, and F. H. Prince & Company owed to the Maine Company on notes $710,000.

Q. 156. $710,000? A. That is on January 1, 1921.

Q. 157. All right. A. Making a net balance due to the Maine Company of $2,652,234.13.

Q. 158. May I interrupt to ask you if that account receivable was one of the principal assets of F. H. Prince & Company at that time? A. That accounts receivable was the principal asset of F. H. Prince & Company, and it also was an interest-bearing account which, of course, meant income to F. H. Prince & Company.

Of course, as I have previously stated I should say at

this particular time that that account was financed by borrowing from banks by F. H. Prince & Company when the New Jersey Company common stock was pledged.

In 1922, or at least during 1921 and 1922, as I have previously testified, the Maine Company turned over to F. H. Prince & Company $2,000,000 Maine Company's 7 percent debenture bonds, and $300,000 in cash.

Of course, this didn't help F. H. Prince & Company's condition at all because it was immediately turned over to Mr. Prince for the purchase of the J. Ogden Armour interest in the Maine Company.

This, of course, as I say, didn't help Prince & Company because we couldn't pay off any loans with it and we lost the interest on that amount which was credited to the account.

From 1921 to 1927, or at least from 1922 until the early part of 1927, as will be observed from looking at this S-65, there were really no borrowings of any consequence from the Maine Company. There was one borrowing of $25,000 which was repaid in a short time.

However, the credits which the Maine Company was receiving in the form of interest on bonds, dividends on New Jersey Company common stock, was piling up until it was equal to over a million dollars, about $1,182,000, in 1927.

Q. 159. That is, I assume, because F. H. Prince & Company was collecting those dividends—

Mr. Clark: Wait a moment. That is a leading question.

Mr. Welch: Oh, well; you know this as well as I do, Mr. Clark. It is in the stipulation.

The Member: Nevertheless you had better observe the forms.

Mr. Welch: All right.

A. I stated the dividends were being collected by F. H. Prince & Company and credited to the account of the Maine Company—

Mr. Clark: May I ask him what the question is?

Mr. Welch: I asked him to trace these transactions—

Mr. Clark: I didn't understand it that way.

The Member: That question was stricken. We are getting back to the original narrative.

Mr. Welch: I will try to keep still and let the witness trace those transactions through.

Q. 160. (By Mr. Welch). Go ahead, Mr. Donovan. *A.* During this period from 1922—at least back in 1922 I should have mentioned that F. H. Prince & Company owed to the Maine Company approximately 17,000 shares of New Jersey Company common stock which was pledged on bank loans, and I previously stated, when the bonds and money was received from the Maine Company and turned over to Mr. Prince, that didn't give us any chance to pay any bank loans or release that stock, so they were still outstanding, as far as we were concerned.

During the years 1922 to 1927, in spite of the fact that the loans didn't increase to any extent, F. H. Prince & Company delivered to the Maine Company approximately 6,000 shares of stock by releasing it from the bank loans.

Q. 161. And by "stock," you mean what stock? *A.* Six thousand shares of the New Jersey Company common stock.

Q. 162. Go ahead, sir. *A.* In 1927 Mr. Prince personally borrowed the $1,200,000 and various collateral which I previously spoke about, and this money was used to discharge the debt to the Maine Company consisting of notes and accounts payable in the amount of $1,182,318.38. Then, of course, in December of 1927, as I have previously testified, there was $400,000 borrowed by F. H. Prince & Company for its own purpose and secured by securities other than New Jersey Company common or Maine Company 5 percent bonds.

At the end of 1927 there was still outstanding—that is, as

I mentioned once before—Mr. Prince, when he borrowed the $1,200,000 from the Maine Company he said he would personally return the 11,000 shares of New Jersey Company common stock which was then pledged on F. H. Prince & Company loan so it would become necessary for F. H. Prince & Company to pay those loans off to release the stock so Mr. Prince could live up to his obligation, so during the period from 1927 until 1933 it will be observed in S-65 various borrowings were made by F. H. Prince & Company from the Maine Company, these borrowings being used mainly to pay off bank loans and releasing 9,000 additional shares of New Jersey Company common to Mr. Prince, who in turn returned it to the Maine Company.

That left a balance of about 2,000 shares which would be owing to the Maine Company by Mr. Prince and F. H. Prince & Company owed to Mr. Prince.

Since 1922, when that transaction occurred in which I mentioned that Mr. Prince bought the Armour & Company stock—at least bought the J. Ogden Armour stock of the Maine Company, F. H. Prince & Company was, if you will, were playing a losing game, so to speak. The principal asset was gone. That is, the 2½ million debit balance was gone.

The interest on that account that previously had been charged was no longer being charged because there was no longer any debit balance there, so F. H. Prince & Company had lost the current rate of interest on that account from 1922 to 1923, and, in fact, after that date.

Another thing I might mention regarding that 2½ million dollars, not only did they lose the interest on it, but, of course, they had borrowed that money from banks originally to finance these purchases and they still owed the money to the banks with interest, so they were losing it as a receipt but they still had to pay it to the banks as the loans were still outstanding.

During this time F. H. Prince & Company up to 1933 frequently borrowed money from the Maine Company and, incidentally, there were frequent payments of those loans, too, during that period.

There were borrowings and also returns but the money, as I say, was used to release stock of the New Jersey common loans and was also used sometimes to finance F. H. Prince & Company current operations.

Another reason that these bonds were used to release securities that customers had, because, as I mentioned once before, in 1927 the margin accounts, upon Mr. Prince's instruction, had been stopped but there were still securities out on bank loans which belonged to customers and we had to release those securities so that would entail paying up those bank loans to get the stocks out to deliver to customers.

Going back to 1930 for a moment, you will observe in S-65 that Mr. Prince personally returned to the Maine Company $650,000 reducing his loan of $1,200,000 to $550,000.

During that same year F. H. Prince & Company borrowed $475,000 but they repaid $400,000, leaving a net borrowing of F. H. Prince & Company of $75,000, but the net condition for the year, as far as the Maine Company was concerned, was they had received $650,000, a loan of $75,000, so it was a net gain of $575,000.

In 1932, it was decided to use F. H. Prince & Company as the vehicle or means to buy into the Armour Company.

As the result of this Mr. Prince felt that the F. H. Prince & Company's financial statement, in so far as the New York Stock Exchange questionnaire, which had to be filed every six months, had to be strengthened, so he decided and did borrow, in 1932, $450,000 from the Maine Company and he turned over these funds to F. H. Prince & Company which, of course, debited cash and credited Mr. Prince's capital ac-

count, thereby making a much stronger looking financial statement of F. H. Prince & Company.

In 1933, Mr. Prince did practically the same thing. He borrowed personally $440,000 in the Maine Company, and he turned over these funds to F. H. Prince & Company to strengthen the New York Stock Exchange questionnaire. Of course this was done for the purpose of making that questionnaire stronger in case anybody should see it. Also, in 1933, F. H. Prince & Company borrowed from the Maine Company $1,000,000. This $1,000,000 was used to finance the purchase of Armour & Company stock in the amount of $1,067,389.50.

Q. 163. And that purchase was made in '33? *A.* That purchase was made in 1933.

Q. 164. Well, did that purchase represent anything like control of Armour & Company? *A.* Oh, no.

Q. 165. Well— *A.* It was a large block of stock but it was far from being a control.

Q. 166. Well, now, at some time after the purchase was Mr. Prince elected chairman or to some office? *A.* Yes, he was.

Q. 167. In Armour & Company? *A.* Yes.

Q. 168. What office? *A.* He was elected to the chairmanship of the board of Armour & Company.

Q. 169. Did F. H. Prince & Company do anything to bring about that election in addition to buying this block of stock that you mentioned? *A.* Well, of course, they did in this way: The New York Stock Exchange questionnaire was strengthened. Of course, Mr. Prince did that through F. H. Prince & Company, and also solicited proxies from brokers who were members of the same exchanges that they were, namely, the New York and Boston and Chicago Stock Exchanges.

Q. 170. Did the strengthening of their statement have any-

thing to do with their ability to secure the proxies? A. Yes, it did.

Q. 171. I think we all understand this, but you have spoken of these borrowings in '32 and '33 of sums from the Maine Company which were contributed to the capital of F. H. Prince & Company. A. That is right.

Q. 172. Since we all know F. H. Prince & Company was owned entirely by F. H. Prince as an individual, how did those borrowings strengthen F. H. Prince & Company? A. Well, of course, as far as the New York Stock Exchange was concerned, and this was done for the New York Stock Exchange questionnaire, Mr. Prince, as an individual, and F. H. Prince & Company is an entirely different person, and, of course, when Mr. Prince made borrowings individually with a bank or anybody else, as a matter of fact, they wouldn't appear on this questionnaire for the Stock Exchange.

Q. 173. Now, I think you have already told us that the bank loans on which the Jersey common was collateral bore interest, the bank loans of F. H. Prince & Company? A. Yes, sir; they did.

Q. 174. At what rate did they bear interest from 1922 through 1933? A. Well, with the exception of a short time in 1924, we always paid interest ranging from 4 percent to 6½ percent.

Q. 175. Will you tell us again for how long a period you observed the relations of F. H. Prince & Company and the Maine Company? A. From 1920 to 19— well, to the present time.

Q. 176. Have you observed during that period whether or not F. H. Prince & Company has been of any service to the Maine Company? A. Oh, yes, always been of considerable service to the Maine Company.

Q. 177. To what way or to what extent? A. Well, the

purchases of this New Jersey Company common stock, which the Maine Company was quite anxious to get by soliciting the stockholders. And it is common knowledge in Boston, New York, and Chicago that if anybody wants to sell Chicago Junction, at least—New Jersey Company common, they contact F. H. Prince & Company, and they will find a ready market for it. And also, if they heard of people dying or there being an estate, they were probably—probably there was some action taken on it to visit the estate to let them know there was a ready market, because the stock wasn't listed—at least, it was listed but with a very narrow market, and the estate would know that they could get cash for it immediately from F. H. Prince & Company.

Mr. Clark: Do you really know anything about what you are stating now?

The Witness: I do, sir.

Mr. Clark: And from what source?

The Witness: You mean as to purchasing the stock?

Mr. Clark: Yes.

The Witness: Well, as Mr. McDonough's assistant in the office, I frequently purchased it.

Mr. Clark: I see. You actually did it yourself?

The Witness: For the Chicago Stock Yards Company as a customer of F. H. Prince & Company; yes, sir.

Q. 178. (By Mr. Welch). From your observation, Mr. Donovan, so far as you have observed it, has there been any substantial reason why F. H. Prince & Company should have been kept in business, say, for the last 10 years except for what it has done on behalf of the Maine Company?

Mr. Clark: Oh, now, I object.

Mr. Welch: From his observation.

The Member: Well, that involves a great deal of reasoning on his part. I think the objection is well taken, and it is sustained.

Q. 179. (By Mr. Welch). From your knowledge of F. H. Prince & Company's transactions, can you tell us whether or not F. H. Prince & Company has been—whether or not the operations of that company have been resulting in a gain or a loss during the last, say, 10 years? *A.* They resulted in a loss.

Q. 180. Will you tell us in approximately what amount per year? *A.* Well, it resulted in a loss from fifty to seventy-five thousand dollars in, you might say, operations, and, besides this, there were losses from the sales of securities. Most years there was a loss rather than a gain from sales of securities.

Q. 181. But the fifty to seventy-five thousand, through your observation, is from operations alone? *A.* Operations; that is right, sir.

Mr. Welch: Now, I think I would like to suspend, if I may, Mr. Clark, at this point and put on Mr. Prince.

Mr. Clark: Yes, if it is understood, as I understand it is, that we may, before cross-examination, have an opportunity to go over these books.

Mr. Welch: Yes. Well, I guess so.

I will turn them over to you for cross-examination at the first opening.

Mr. Clark: I don't want to take him for cross at this time.

Mr. Welch: You won't have a chance. I have a notion Mr. Prince will run through the rest of the day.

Mr. Clark: Do you think so?

Mr. Welch: He is going to take the stand now.

Mr. Clark: Well, that will be all right, then.

The Member: You may stand aside However, hold yourself in readiness to be called at any moment.

The Witness: Thank you, Your Honor.

(Witness temporarily excused.)

Mr. Welch: Mr. Prince, will you take the stand, sir?

If Your Honor please, and Mr. Clark as well, could I say this word? Mr. Prince is 79 years of age. The case has been postponed twice because of his health. He is testifying now with the doctor in the courtroom, purely as a precautionary matter, not that we anticipate that he will be needed, but I did want to say to Your Honor that because of these facts I am going to compress my direct more than I would if he were 20 years younger, and in so far as it is consistent with your duty, Mr. Clark, I would appreciate it if you would compress his cross. I don't at all wish to ask you to compress it beyond any reasonable length to which you feel you must go.

Mr. Clark: I will quite conform to your suggestion. I have no idea of furthering cross any further than necessary.

Mr. Welch: Thank you, sir.

MR. FREDERICK H. PRINCE

called as a witness by and on behalf of the Petitioner, and, having been first duly sworn, was examined and testified as follows:

Direct Examination.

Q. 1. (By Mr. Welch). What is your full name, Mr. Prince? *A.* Frederick Henry Prince.

Q. 2. You live where, Mr. Prince? *A.* Well, I live mostly on a railroad train. No. My home is at Newport, R. I.

Q. 3. You are, I take it, the president of the Maine Company? *A.* I believe so, sir.

Q. 4. Whose case is being tried here.

I want to take you directly to the testimony that we are interested in and ask you, if I may, when you first became interested in any way in the Chicago Stock Yards. *A.* Well, in 1882, I think it was, Mr. Nat Thayer was a family friend, gave me a letter to Mr. Sherman, and I went out to the Chicago Stock Yards, bought a few shares of stock, and from

then on I went continually, quite often, because I became interested in the property and in the men that were there.

Q. 5. Now, I think you had something to do with the formation of the Jersey Company in 1890; did you not? *A.* I knew that Mr. Thayer was being held up by the three packers. They had bought land at Tolliston, which is now the Gary United States Steel property, and we had several visits and talks in Chicago, and, finally, I suggested to him that I thought I could get up a company to buy out the old owners and we could settle with the packers who were threatening to move.

Q. 6. As a consequence of that, was the Jersey Company formed in 1890? *A.* And the consequence of that was I made two or three trips to Europe, took Mr. Newell over, and we formed the New Jersey Company in conjunction with a syndicate that I got up over in England, and that is the reason the Jersey Company was formed, in order to come to satisfactory arrangements with the packers.

Q. 7. Now, I think I will go right along, if I may, and ask you if at some time you were interested in the formation of the Maine Company, the present Maine Company. *A.* The contract that we made with the packers whereby we paid three millions of dollars was made for 15 years. I tried to make it twenty-five but without success, and when that time expired and negotiations were begun again, I happened to know that one of the packers, Morris, was asking for a bigger division than the original agreement, and I then persuaded Mr. Armour to lead the syndicate and to come in and buy up with me the common stock of the New Jersey Company.

Q. 8. And did he become interested with you in the Maine Company? *A.* He did, sir.

Q. 9. And after the Maine Company was formed did Ar

mour & Company continue right on doing business at the yards? A. They did.

Q. 10. And did all the other packers? A. They did.

Q. 11. Could I go back for a moment, Mr. Prince, and ask you who were some of your fellow directors in the Jersey Company? A. Well, it so happened that when the offering was made to the public, through Blake Brothers Company, the English people were very anxious to have some very strong names that were well known, because it so happened there came about an important financial panic at that time in South America, and so Mr. Chauncey DePew was president—in fact, I have got the list here. I have to look it over.

Chauncey DePew of New York was president; John Quincy Adams of Boston, vice president; Edward J. Phelps of Burlington, late U. S. Minister to England, was a director; Mr. Sewell, a director, former Senator from New Jersey; John Hoey, president, Adams Express Company; Frederick H. Winston of Chicago, High E. Childers of London, late Chancellor of the Exchequer; Francis Barron Blake of Blake, Boissevain & Company, London bankers; Bernard T. Bosenquet, Director of Lloyds Bank, Ltd., of London, Adolph von Adre, Andre, Mendel & Company, Bankers in London and Amsterdam.

Q. 12. Do you feel quite all right, Mr. Prince? A. Yes, all right. I am all right now.

Q. 13. Did you begin any program of buying New Jersey common after the Maine Company was formed? A. Oh, I continually bought, you understand, all the time. I consulted Mr. Armour from time to time, and I went on buying, buying, buying, whenever the opportunity occurred.

Q. 14. Do you remember, Mr. Prince—you may not—but about how much you bought in the first 10 years, say? A. I don't think I could. I had public accountants who looked after my books, and I am afraid they knew more than I do.

They have been on the stand to tell you. They can really tell you. All I can tell you was the principle, and what our purpose was.

Q. 15. Yes. *A.* I can tell you what my purpose was, if you would like to know.

Q. 16. I understand, but I think you have said enough about that at the moment.

Do you remember that F. H. Prince & Company furnished funds to buy that common in the early part— *A.* I beg your pardon?

Q. 17. Do you remember that F. H. Prince & Company, your concern, furnished funds to buy Jersey Company before the Maine Company went— *A.* We used our credit, you understand, to buy that stock, you understand, and bought wherever it was offered.

Q. 18. Do you remember, Mr. Prince, how long a period of time you were able to get a charter for the New Jersey? *A.* No, that was a legal matter. I can't tell you. That was a legal matter. Mr. Guthrie was our lawyer, representing the English people.

Q. 19. Do you remember when the charter expires of the Jersey Company? *A.* Oh, yes. The charter expires next year.

Q. 20. 39— *A.* '40.

Q. 21. Now, Mr. Prince, after the Maine Company was formed, did you make some plan about what you wanted to do with the Jersey Company in 1940? *A.* Yes. Mr. Armour and I talked the matter over, and we realized that in 1940, that it would be advisable to liquidate the Jersey Company for two reasons.

In the first place, when the New Jersey Company was formed, there was no means of raising any new capital. It was a difficult—you couldn't increase your stock, and so it

was a difficult thing for the necessities of the yard to raise any new capital.

In the second place, there was a very large saving to be made in liquidating the New Jersey Company. And then I called Mr. Armour's attention to that, and he joined me, and I bought up all the stock of the New Jersey Company, that I could, every single share.

Q. 22. Now, let me move ahead, if I may, Mr. Prince.

Did the time come when you had—strike that out.

Did the time come when something had to be done about buying Mr. Armour's interest in the Maine Company? A. Why, in the trial that the packers were in, it was finally settled by what we call the packers' decree, and in the packers' decree, they agreed to dispose of—a great deal of outside interests, and among others they agreed to dispose of all their stock yards' interests. So Mr. Armour was obliged to sell his Maine Company stock.

Q. 23. I want to shorten this all I can, and I want to show you— A. I am all right.

Q. 24. —to show you a paper that you have not seen in many years and just ask you if you will identify your signature and the signature of Mr. Armour at the bottom of it. A. I will.

Q. 25. And on the second page that you have before you, is that your signature and his? A. It is.

Mr. Clark: Is this something which is already in evidence?

Mr. Welch: No, I am going to offer it now, and I would rather not delay—

The Witness: Can I read it?

Mr. Welch: It is the letter by which—

The Witness: I didn't know what it was. I thought I would like to read it.

Mr. Welch: I just thought perhaps we would shorten your time on the stand if we didn't.

The Witness: Well, I don't know.

Mr. Welch: All right.

Mr. Prince, it is an agreement for your buying his stock, Mr. Armour's stock.

The Witness: Well, I am sorry, sir, but I don't remember.

Mr. Welch: I don't know what to do with it properly except to offer it and have it marked. I think we will take the necessary time.

Mr. Clark: I have no objection.

Mr. Welch: What is your next number?

The Clerk: Thirty-five.

Mr. Welch: Thirty-five is the letter of November 1st, 1920, from F. H. Prince to J. Ogden Armour.

Thirty-six is the letter of November 1st from F. H. Prince to J. Ogden Armour.

Q. 26. (By Mr. Welch). Mr. Prince, when you get around to buying out Mr. Armour, do you remember anything about efforts that were made to have the Mainé Company, itself, buy him out? *A.* Why, if I think—yes, as I remember it, there were two occasions. I think they asked Washington—who they asked I don't know, but they objected, I think, to the Maine Company buying them out. Also when the packers were going to sell me all their other interests in the different yards, they wanted me to buy it, and I agreed, and I think—I don't know whether it was the court or who it was, they objected, I guess it was.

(The documents so offered and received in evidence were marked "Petitioner's Exhibits 35 and 36," and made a part of this record.)

Q. 27. (By Mr. Welch). Do you remember the sum that was paid Mr. Armour? *A.* I beg your pardon?

Q. 28. Do you remember the sum that was paid Mr. Ar-

nour? A. Well, I think it was about three millions, if I remember correctly.

Q. 29. Now, I want to turn to quite a different thing. Do you remember there was difficulty in the banks in Chicago, in 1932? A. I didn't know it was confined to Chicago, sir.

Q. 30. Do you remember that your companies did something about a bank that is now the Live Stock National Bank? A. Yes, I remember that distinctly.

Q. 31. Did money of the Maine Company and of the operating companies go into that bank? A. They did, sir.

Q. 32. Why were you interested, Mr. Prince, in taking care of the bank at the stock-yards at that time? A. Because Mr. Leonard and Mr. Reimers thought it would be a great detriment to the stock yard industry if that bank, with all the connections it had, was allowed to fail.

Q. 33. Mr. Prince, it is in evidence here, and I won't trouble you with the years, that in the early years, before you got your New York Central lease, your dividend policy was somewhat irregular. Do you remember that? A. Yes, I do, sir.

Q. 34. And after the New York Central lease was made, which was, I think, 1922, you settled down to a dividend of $400,000 a year? A. Yes, sir.

Q. 35. Will you tell His Honor the reasons that led you to fix that sum as the dividend of the company? A. I thought with the large sum we had to pay in 1939 and 1940 we should only pursue a conservative policy.

I had had a great deal of experience in financing. In fact, I was very fortunate in being associated and knowing both in New York and Chicago and Boston probably the leading men that were active in finance and I thought ever since we went off the gold basis that we were in a very doubtful period; in fact, a very anxious period, and I don't know that we are out of it today, but I have had, I think I had,

especially in the younger days, because I have owned stock in a great many railroads, I have had large obligations but I have always met them promptly.

Q. 36. Mr. Prince, I was thinking more about going back to 1924 when you fixed this $400,000 a year. Did the rate of return on your capital stock have anything to do with it? *A.* I thought it was a conservative rate, you understand. I didn't care about paying any more than that, you understand, with the large obligations we had ahead of us.

Q. 37. Were you, in the years 1930 to 1933, in any way anxious about the New York Central lease? *A.* Why, yes and no. I knew one thing: I had spent 3 years with the New York Central officials in making that lease. I think if was a year and a half before I ever named a price on it.

I insisted that they go out and examine the property and the books before I named any price and then, later on, the New York Central was so afraid I wouldn't live up to my contract that the president made a personal contract and deposited a hundred thousand dollars to carry it out. They saw what a great advantage it was to the New York Central to have that great terminal property in Chicago.

I think it paid them—of course they couldn't add anything to the property because the business we were building up there was there, but I think it has paid them about, over the lease, without the expenditure of one cent, it has paid them $14,000,000.

Therefore, as far as that is concerned, even if the New York Central went into the hands of a receiver that that lease would hold and would stand good.

In fact, I offered to break the lease because there was another railroad wanted to come in, and I offered to alter the lease as I had made it. They all recognized the value of that lease, and, therefore, while 40 percent of all our railroads are in the hands of the receiver and nobody knows—

probably the coal roads and one or two other roads are the only ones that may weather the storm.

In fact, at the time I thought a hundred-year lease payable in gold was perhaps the best contract that could be made.

Q. 38. And you mean by that, at the time the lease was made? *A.* At the time the lease was made, yes.

Q. 39. Did you have any anxiety at all in 1932 and 1933 that the New York Central might go into receivership? *A.* I thought it possible for any railroad. If it hadn't been for the R.F.C. loaning five billions of money, why, practically all the railroads excepting possibly a few coal roads would be in the hands of a receiver.

Q. 40. Mr. Prince, it has been testified to here that on one occasion you borrowed $160,000 from the Maine Company to buy a house in Newport. Will you tell us about that? *A.* That was for Mrs. Prince.

Mrs. Prince had lived in Newport and she thought the climate on the North Shore was a little too vigorous for winter and she wanted to go back, and so until the property on the North Shore was sold, why, I practically loaned her the money although she had her own fortune which she had inherited from her father in trust, but I considered there was no question about it being good; I was prepared to pay it, anyhow.

Q. 41. When you speak of this house on the North Shore, has it a name, sir? *A.* Somebody named it Princemere.

Q. 42. And is its value, in your opinion, somewhat more than $160,000? *A.* Oh, yes.

My dear sir, if you can tell me what any property is worth today—I have a ranch out in Wyoming and I don't think anybody could tell what property is worth today.

Q. 43. Mr. Prince, has it been your policy to pull money in

from the operating companies steadily to the Maine Company all through the years? A. Yes, sir.

Q. 44. All you could, sir? A. Yes, sir.

Q. 45. Have you ever succeeded in accumulating funds in the Maine Company beyond its reasonable needs?

Mr. Clark: To that I object, Your Honor. That involves a conclusion of fact.

The Member: I will sustain the objection. The objection is to the form of the question.

Mr. Welch: Is to the form?

The Member: Is to the form of the question.

Q. 46. (By Mr. Welch). In your opinion, Mr. Prince, have you ever—strike it out, will you, please?

In your opinion, Mr. Prince, has the Maine Company ever accumulated funds beyond its own reasonable needs for those funds?

Mr. Clark: Well, now, to that I am also going to object, Your Honor, because I think it involves the same conclusion, although phrased differently.

The Member: I think that probably does not make the question objectionable. It may affect the weight of the answer.

You may have to take into consideration the interest of the witness in making the answer, making his statement, but I think that does not make it inadmissible.

I will overrule the objection.

Mr. Clark: And an exception noted, please.

Mr. Welch: Would you read that question to Mr. Prince, Mr. Reporter, so that he can hear it?

(Last question read.)

A. I would say, to be conservative, never.

Q. 47. (By Mr. Welch). Mr. Prince, did you ever have in mind using the Maine Company for the purpose of preventing an imposition of a surtax on you as a shareholder?

Mr. Clark: Just a moment.

(Counsel confer.)

Mr. Clark: No objection.

The Member: You may answer the question.

Perhaps you had better read it to him, Mr. Reporter.

The Witness: I will gladly tell you anything I know.

The Member: Listen carefully to the question, Mr. Prince, and see if you can answer it, as put.

The Witness: Will you read it again?

(Last question read.)

A. Never, sir.

Q. 48: (By Mr. Welch): Mr. Prince, I have just got one other question to ask you: Will you tell us what your purpose was in accumulating funds in the Maine Company, as you have done? A. Why, sir, I recognized, as a man that had many years experience in finance, the obligations that I had before me to pay in 1939 and 1940. I kept that continually before me. I recognized the responsibility that I had, that in carrying on that industry and the association I had with the men who had been with me all my life, to see that nothing happened to it. I used the best judgment I could to be conservative. Through all the troubles that we have had and the uncertainty, I tried to hold my ship to its course. Whether I have done so, or not—

Mr. Welch: You may inquire, sir.

Mr. Clark: Ask Mr. Prince if he would like to rest a moment.

Mr. Welch: Thank you.

Would you like to rest a moment, Mr. Prince?

I would like to get him off the stand. Is that agreeable?

The Member: Either way is agreeable. I don't want the witness to be unduly stressed physically, but if he wants to go on, let us go on.

Mr. Clark: Would you care to go on, Mr. Prince?

The Witness: Oh, yes. I would be glad to, sir.

Cross-Examination.

X-Q. 49. (By Mr. Clark). You stated, sir, your purpose in the conduct in the activities of the Maine Company; your conduct in the activities of the Maine Company and your purpose. A. Yes. I devoted all of my time from the time the Maine Company was formed to the development of the plans I had to build the railroad up and the Central Manufacturing lands.

X-Q. 50. And you developed that entire situation? A. I think I did, sir.

When I bought the lands I had to buy it from my personal funds before I could get the company to take it over.

X-Q. 51. And you had to handle all the activities of the Maine Company, didn't you, sir? A. I think I did, sir, but I had men who had been with me for a great many years out there.

X-Q. 52. Yes.

You have spoken about your concern as to the 1940 liability. What do you mean by that?

A. Well, there would be practically $28,000,000 would have to be raised, in 1940.

X-Q. 53. For what reason? A. Why, to pay off the $14,000,000 bonds that were due; to pay six million and a half of preferred stock; to pay three millions of bonds on the Central Manufacturing and to pay our guarantee on the Elevated bonds, I think it was $2,600,000, if I remember rightly.

X-Q. 54. Now, in your conduct of the activities of the Maine Company, did it occur to you that it would be advisable to purchase any of the outstanding bonds of the New Jersey Company? A. Outstanding bonds of the New Jersey Company?

X-Q. 55. Yes. A. If anything came cheap, we bought everything there was that came along.

X-Q. 56. Well, you were buying stock of the New Jersey Company. A. Yes.

X-Q. 57. Throughout. A. Yes.

X-Q. 58. And had done so for many years. A. That is right.

X-Q. 59. Now, why, if you were concerned, as I understand you were, as to the situation of New Jersey Company in 1940, why didn't you buy the bonds in? A. Because the bonds were very closely held. I think Mr. Rockefeller had three million.

X-Q. 60. Well, there were fourteen million, weren't there? A. There were fourteen million but the bonds were very closely held, you understand.

X-Q. 61. And you mean you couldn't buy them? A. No. They were held mostly by trustees; even the stocks were held by trustees, and women, all over the country.

X-Q. 62. Were there any difference between the stock and bonds? A. Yes. We bought bonds or stock whenever there was an opportunity.

X-Q. 63. Yes, but was there any difference in the type of holdings of the stock and the bonds? A. Why, no. I considered both were equally good. It was only a question of price.

X-Q. 64. Was your concern relative to the year 1940, as to financial relationship, due to the expiration of the charter of New Jersey Company? A. Why, yes, the charter was expiring and the organization, as I said before, gave no leeway of obtaining new capital that might be required, and, also, there was a large saving to be made in reorganizing the company.

X-Q. 65. You would have expected to reorganize, wouldn't you? A. I wouldn't have reorganized, you understand; I expected to liquidate the company. That is what Mr. Armour and I decided on.

X-Q. 66. Why were you concerned relative to the bonds?

A. Because the bonds had to be paid.

I will tell you, with regard to that: When the ten million issue came down it appeared to be an unfortunate financial time at that time and several of the New York bank syndicates were going to bid and I knew they were going to bid through the First National in Chicago.

Well, the man at the head of their bond department was a very hard trader and I was very much frightened he would put a low price on my bonds, so finally I persuaded the president of the company to withdraw, and I think, as a matter of fact, I got five points or six points more from Lee Higginson Company than I would have from him.

Mr. Clark: I think there is nothing further, Your Honor.

Mr. Welch: That is all, Mr. Prince.

The Member: Mr. Prince, let me ask you one question, if you will, please, sir, and that is I would like to have a little more specific explanation in this record about the failure to liquidate whenever it was possible to do so these outstanding fourteen millions of bonds. It is carrying along the question that is in the mind of Government's Counsel.

If you were concerned, as it is said that you were, about the fact that in 1940 you would have to liquidate the New Jersey Corporation and that that liquidation would involve these very substantial sums of which this $14,000,000 bonded indebtedness was one, can you tell me why it would not have been wise and the part of good policy on your part to liquidate those bonds by buying them as rapidly as you could before 1940 arrived so that when 1940 did arrive there would be a minimum amount of liquidating to do on those bonds?

The Witness: The reason of that, sir, is I shouldn't suppose there were—I am just giving a rough idea—I shouldn't

suppose there were twenty-five or thirty thousand bonds sold in a year. They had all been so closely held, you see.

The Member: Did you attempt to purchase those bonds?

The Witness: My office had orders that whenever they came along to buy them in, but there were none. I don't suppose there were twenty-five thousand sold in a year.

The Member: But you didn't try to stimulate a market at all so that you could buy them or so that they would be offered for sale?

The Witness: There was one thing and that was this: I wanted to buy all the securities; if I bid up one price on one, why, the ones I could buy would cost me more, and, of course, as a matter of fact, I have been through so many panics and have seen so many of my associates fail that all I can say is that I think I pursued a very wise policy and did the best I possibly could, you understand, recognizing the responsibilities I had on my shoulders.

Those bonds were very closely held, as I say, and as a matter of fact if I had bid up the price on those, something else I bought I would have to pay equally more for, but whenever those securities came along we bought them.

The Member: Essentially, then, the reason you didn't buy them was the reason they were not offered? That is, on the market?

The Witness: That is right, sir.

The Member: Whenever they were offered on the market at what you regarded as a satisfactory price—

The Witness: Whenever there was a panic, you understand, we would grab them when they were at a satisfactory price.

Mr. Clark: Just how many bonds did you buy?

The Witness: I can't tell you exactly how many bonds we buy, but all I can say is whenever the bonds—we never sold any. Everything we bought we bought when we could but

if I put up one bond ten points it had the effect of putting up everything else.

For example, when I bought the stock, the stock was selling at about 130 in the market and I offered 160 to everybody, you understand, and made a deposit with the American Trust Company to pay everybody for their stock.

Mr. Clark: Do you have any recollection as to how many bonds you bought?

The Witness: No, sir; I couldn't tell you that.

Mr. Clark: You have no recollection at all?

The Witness: I couldn't tell you, sir. I only know as any one of the securities—we were looked upon as a market for those things and we would have bought that would have come along that was offered by the brokers, but the policy was not to bid up anything because it affected the whole market, but we bought everything we could.

I should say I never saw a lot more than 5,000 offered, you understand; practically, they were so placed away that there were none for sale.

Mr. Clark: Are you sure that you ever bought any?

Mr. Prince: I would have to ask my office, sir, but I tell you anything that would have been offered was bought. I couldn't tell you that.

Of course, we were buying all the Maine bonds up, too, at the time, you understand; everything that came along. The result was we bought all the Maine bonds up except $2,600,000.

X-Q. 67. (By Mr. Clark.) Shifting to another point, Mr. Prince, do you recall that in 1905 what is referred to as the Railroad or Elevated Company, issued some first mortgage 4's in bonds in the amount of $2,327,000, approximately?

A. Yes. The reason for that was this, sir: We had to elevate the tracks and we made an arrangement with the Elevated Railroad that they would pay us a rental to the extent

the cost of our elevating the tracks, but, unfortunately, there was some mistake there, and it cost us about $650,000 more.

Mr. Clark: Now, of course, Your Honor, I move that other than what is responsive be stricken, in that answer.

The Witness: I beg your pardon?

Mr. Clark: It is only the first part of the answer which is responsive, that there were such bonds issued, to his recollection.

The Member: I will disregard the rest of the answer.

The Witness: I was trying to explain to you, sir, why I issued them.

Mr. Clark: That is all right, sir. The point of my question runs otherwise.

X-Q. 68. Do you recall when those were due? *A.* No. I think they are callable at 105.

X-Q. 69. I don't mean the amount. Do you recall the year in which they were due? Was it 1945? *A.* I should think that was about the time, sir.

X-Q. 70. That is after the expiration of the charter of New Jersey Company, isn't it? *A.* Yes, but we have the right to call those bonds.

X-Q. 71. I see. *A.* What is that?

X-Q. 72. I see; and on what terms and where? *A.* 105, I think it is. That is provided for in the $28,000,000.

Mr. Clark: I think there is nothing further.

Mr. Welch: You are finished, Mr. Prince, and we are very much obliged to you. (Witness excused.)

Mr. Welch: Could we have a short recess, if Your Honor please?

The Member: Yes, we will suspend for a few minutes.

(There was a short recess taken.)

MR. JAMES F. DONOVAN

having heretofore been first duly sworn, was recalled to the stand, and was examined and testified as follows:

Direct Examination (Continued).

Q. 182. (By Mr. Welch). Mr. Donovan, I show you a photostat and ask you if this is a photostat of a record of a meeting of the board of directors of the Maine Company?

A. It is.

(A document was handed to Mr. Clark by Mr. Welch.)

Mr. Welch: I will have this marked as Exhibit 37, a copy of minutes of a meeting of the board of directors of the Maine Company, November 22, 1911.

Mr. Clark: For the record, there is no objection.

(The document so offered and received in evidence was marked "Petitioner's Exhibit 37," and made a part of this record.)

Mr. Welch: And I am reading only a portion of the exhibit at this moment, and by "the exhibit" I mean Exhibit No. 37. It is a special meeting of the board of directors of the Chicago Stock Yards Company, the Maine Company, the taxpayer.

"Voted that the treasurer be and hereby is authorized to invest the funds of the company in Stock Exchange securities, in shares and securities of the Chicago Junction Railways and Union Stock Yards Company, the Union Stock Yards and Transit Company, and the Chicago Junction Railway in any securities authorized by law for National banks or for Massachusetts Savings Banks or proper for trustees in Massachusetts, and to loan the same with Stock Exchange securities as collateral, or on the same terms and conditions as permitted to national banks or to Massachusetts savings banks."

You may examine.

Cross-Examination.

X-Q. 183. (By Mr. Pierson). Mr. Donovan, I show you what has been introduced in evidence as Petitioner's Ex-

hibit 34, and I will ask you again to state what that is for the record. A. That is the summary of the schedule of bank loans of F. H. Prince & Company. I should say it this way: This is the summary from 1922 to 1933 of bank loans of F. H. Prince & Company upon which New Jersey common stock was pledged as collateral and the amount of such stock pledged upon such loans as collateral at such times.

X-Q. 184. Now, if I understand you correctly, that is the collateral that has been placed by F. H. Prince & Company with the banks? A. This schedule here just contains the shares of New Jersey Company common stock which has been pledged with F. H. Prince & Company on bank loans.

X-Q. 185. On bank loans? A. That is right. That is not all the collateral, you understand.

X-Q. 186. I believe you testified this morning, Mr. Donovan, that at the time the Maine Company loaned money to F. H. Prince & Company, that there was collateral put up with the Maine Company? A. What particular year do you refer to?

X-Q. 187. Well, in all the years in which these loans were made by Maine Company to F. H. Prince & Company and Mr. F. H. Prince. A. That is true. I did so testify.

X-Q. 188. Mr. Donovan, in 1931, 1932, and 1933, do you know whether Mr. Prince withdrew some of that collateral and sold it? A. You said Mr. Prince, didn't you?

X-Q. 189. That is correct, or F. H. Prince & Company. A. F. H. Prince & Company. Mr. Prince did not.

X-Q. 190. Did F. H. Prince & Company? A. F. H. Prince & Company in 1931 and 32 and 33—

Mr. Welch: Could I interrupt to ask if it would help you if you had the schedule to refresh your recollection?

The Witness: Yes, it would, Mr. Welch. Not that particular schedule.

Mr. Green: That is Exhibit 24.

(Petitioner's Exhibit 24 was handed to the witness.)

X-Q. 191. (By Mr. Pierson). That Exhibit 24, Mr. Donovan, is the schedule of the collateral which was put up by F. H. Prince, Mr. F. H. Prince or F. H. Prince & Company with the Maine Company on the borrowings, as I understand it, from 1922 through the year 1933? *A.* That is right. That is right.

X-Q. 192. Now, will you turn to Exhibit 24 for the years '31, '32, and '33, and state whether or not F. H. Prince & Company didn't withdraw and sell some of that collateral? *A.* Looking at the schedule for 1931, I can see some collateral that has been withdrawn by F. H. Prince & Company and sold.

X-Q. 193. Can you state what that is? *A.* December 31, 1931, it was on the statement, 141,400 Amiskeag Manufacturing 6 percent bonds. Those were withdrawn after 1931, Mr. Pierson.

1932—May I ask that question to be repeated, please?

(Question read.)

A. In the year 1932 schedule, I can see some securities that were withdrawn and sold.

X-Q. 194. Will you state what they are, please? *A.* 1100 shares of First National Bank.

X-Q. 195. Are there any others? *A.* I don't like to commit myself on that because I am not just sure how the question is intended. If you will—

X-Q. 196. Well, I will ask you with respect now to the year 1931, Mr. Donovan. *A.* All right; thank you.

X-Q. 197. Isn't there collateral there of 8,000 shares of Chicago, Milwaukee & St. Paul Railroad 5's? Bonds, rather? I said "shares." *A.* No, I don't see any.

X-Q. 198. How about 10,000 shares of Armour & Company "B"? *A.* They are not on this list.

X-Q. 199. 1500 Western Dairies? *A.* It is not on this list.

N.Q. 200. 100 Housik Mills, 7 percent preferred. *A.* That is not on this list.

N.Q. 201. Will you turn to your list for 1932, Mr. Donovan, the bonds of the Amiskeag Manufacturing Company 6's. *A.* They are not on this list.

N.Q. 202. Three thousand shares of First National Bank of Boston? *A.* Well, there is 1100 shares on here. There isn't 3,000.

N.Q. 203. Eleven hundred? *A.* Eleven hundred; that is right.

N.Q. 204. 884 shares of Soo Lease Lines? *A.* That is not on this list.

N.Q. 205. I don't believe you answered my question with respect to 1933, Mr. Donovan. *A.* That is right.

N.Q. 206. Do you have on that list any shares of First National Bank of Boston which were withdrawn and sold by F. H. Prince & Company in that year? *A.* No, Mr. Pierson because this list is made up of as December 31, 1933 so it wouldn't be on that list.

N.Q. 207. Well, do you know of any sales that were made by F. H. Prince & Company of withdrawn securities in that year, collateral securities? *A.* Yes, I do.

N.Q. 208. Would you state— *A.* Particular reference to the First National Bank of Boston.

N.Q. 209. Would you state what they were, please, and the amount? *A.* The amount that was sold?

N.Q. 210. Sold; that is correct. *A.* I haven't got the record of F. H. Prince & Company here. I would need the records of F. H. Prince & Company to answer that question.

Q. 211. (By the Member). Well, is it possible by looking at that exhibit, No. 34— *A.* Yes, Your Honor.

Q. 212. —that you have before you to see on the face of the exhibit what in each of the three years was withdrawn

from the collateral on deposit and sold? A. No, Your Honor, it isn't possible to tell that from this list.

Q. 213. Well, that is what I thought. But you say that list enables you to say what collateral was withdrawn from pledge and sold; that is, by looking at that list, I thought you said that you could answer the question? A. No, Your Honor. Mr. Pierson asked me *if I could look at this list* and see if any collateral was withdrawn. All I need do is look at the end of one year and look at the corresponding end of the next year, and if it is gone, it is gone.

Q. 214. That is precisely what I wanted to know. Are you simply testifying now that from this exhibit you are able to see in each year what collateral security of the preceding year is no longer on deposit? A. That is all I can tell by this.

Q. 215. That is all you can tell from the exhibit? A. That is right.

Q. 216. Now, from your knowledge outside of the exhibit you are able to say that the collateral which is not listed for any given year, which has been listed for the previous year, has, in fact, been withdrawn from the collateral and sold, can you? A. No, I can't say.

Q. 217. Very well.

What are you able to infer from the fact that the collateral that is on the list of one year does not appear from the exhibit to be on the list of the succeeding year, only that the collateral has been withdrawn? A. That is all.

Q. 218. From the amount of collateral on deposit? A. That is all, sir.

Q. 219. Is that all you are testifying to, that the list shows that it is on deposit as collateral one year but shows it as not being on deposit the following year? A. That is all I can tell from this schedule, Your Honor.

Q. 220. From that you infer it has been withdrawn? A. Withdrawn.

Q. 221. As collateral? A. As collateral; that is right.

Q. 222. Now, from that are you able to testify whether or not having been withdrawn it was sold? A. I can't testify from this, sir.

Q. 223. Are you able otherwise to testify that the collateral which from that exhibit appears to have been withdrawn was in fact sold? A. Not from any records I have here, sir.

Q. 224. Are you able to testify as to the facts irrespective of records? A. Well, in this way, sir: I know that at the end of a certain particular year here, as I told Mr. Pierson, there was 1100 shares of First National Bank which was withdrawn from one year to the next. Then Mr. Pierson asked me to tell him how many shares were sold. Well, I know that 1100 shares was part of a lot that was sold, but I don't know—I mean, was sold.

Q. 225. That is what I want to find out, how much knowledge you are carrying in your head. A. That is right.

Q. 226. As to the amount which was sold, and I take it now that you are not able to testify about that without reference to some other records besides this exhibit? A. That is right.

Q. 227. That is correct, is it? A. That is right, sir.

The Member: All right.

Mr. Welch: I might add—I think it is very pointless for me to add it—but in so far as the testimony is of any importance at all, I suppose the withdrawal as collateral is the critical thing no matter what its history was after the withdrawal.

Mr. Pierson: Well, I will ask a question on that.

X-Q. 228. (By Mr. Pierson). Mr. Donovan, do you know after that collateral was withdrawn to whom it was sold?

Mr. Welch: Objection. I don't know what collateral that means. Specify, if you will, Mr. Pierson.

The Member: You see, the witness has testified that he can't say without records as to whether it was sold or what part was. Now, it is pointless to ask him to whom it was sold if he doesn't know whether it was sold or not.

The Witness: Your Honor, Mr. Pierson asked me to state all of the securities that were sold. Well, I can answer that question of Mr. Pierson's, but—

X-Q. 229. (By Mr. Pierson). All of the collateral securities which were sold in the respective years? A. I mean this particular year regarding the First National Bank, I can answer it, but if he wants me to name all of the securities that F. H. Prince & Company sold in any given year, I am afraid I can't answer that, Your Honor, without the records.

Mr. Pierson: That is all right, then, Your Honor.

X-Q. 230. (By Mr. Pierson). Mr. Donovan, I believe you testified in your direct examination with respect to the dividends on stock which was acquired by F. H. Prince & Company for the Maine Company. Now, will you further state for the record just how those dividends were treated on the books?

The Member: Of whom? The recipient?

Mr. Pierson: The books of the recipient, yes.

(Question read.)

A. What stock do you mean? The Jersey Company?

X-Q. 231. (By Mr. Pierson). That is correct. A. In what years, Mr. Pierson?

X-Q. 232. In all years to which you testified. I think you started back in the year 1921. A. That is right.

Well, in 1921, as I testified, F. H. Prince & Company had an open account from the Maine Company with a debit balance on it. At that particular time that account had on it some 20,000 shares of New Jersey common. Well, when

that dividend would be—at least, quarterly the dividends were declared by the New Jersey Company on its common stock—when that dividend was received, and I should state that the stock was in the name of F. H. Prince & Company as a matter of fact, it is a common thing to have all stocks in the name of a broker no matter if they belong to a customer, to have them in a broker's name so he will collect the dividends—well, that stock being in the name of F. H. Prince & Company, the dividend was received by F. H. Prince & Company and credited on through the cash book to the Chicago Stock Yards Company as a dividend.

The Member: Wait a minute. The Chicago Stock Yards Company is which company in the lingo we have established here.

The Witness: I am sorry, Your Honor. The Maine Company.

The Member: The Maine Company.

A. (Continuing) That is credited to the Maine Company account on the books of F. H. Prince & Company.

X-Q. 233. (By Mr. Pierson). That is, it is a brokerage account on the books of F. H. Prince & Company? That is, that is the account which might be classified as a brokerage account? A. No, it wasn't a brokerage account.

X-Q. 234. Not a brokerage account? A. No, no, for the customer's account.

X-Q. 235. Customer's account? A. In other words, the Maine Company was a customer of F. H. Prince & Company, the same as you would be if you bought stocks. And to that account the dividend was credited.

Now, from 1922 on, as I stated—do you want me just to refer to F. H. Prince & Company?

X-Q. 236. Yes, if you will, please. A. From 1922 on, as I previously testified, the New Jersey Company common stock, being bought by F. H. Prince & Company for the ac-

count of the Maine Company, the Maine Company paid cash for that and those shares were transferred by F. H. Prince & Company through the transfer agent to the name of the treasurer of the company.

The Member: The name of the treasurer of the Maine Company?

The Witness: The treasurer of the Maine Company and delivered to him; that is, to the treasurer of the Maine Company, and those dividends, of course, naturally, went to the Maine Company because that is the name they were in.

The Member: Well, now, wait a minute. He wants to know what book accounting was done for those dividends by the recipient. Now, this last item that you are speaking about, the recipient, I take it, of the dividend was directly the Maine Company?

The Witness: That is right, Your Honor.

The Member: Because the shares were held in the name of the treasurer of the Maine Company for its account; isn't that right?

The Witness: That is right, Your Honor.

The Member: Now, those dividends were declared and paid by the New Jersey Corporation?

The Witness: That is right, Your Honor.

The Member: Now, to whom? Who received them and who accounted for them, and how?

The Witness: Well, those particular dividends, the last dividend went directly to the treasurer of the Maine Company who entered them, or, at least, he didn't. I did entered them on the cash book of the company as dividends received. They were on the books of the Maine Company.

X-Q. 237. (By Mr. Pierson). Didn't you make an entry on the books of F. H. Prince & Company? *A.* No, sir.

X-Q. 238. With respect to those? *A.* Not for the second group. The first group, yes.

X-Q. 239. When you say "the second group," what do you mean by "second group"? A. I mean the dividends that were credited, at least, the stock that was listed in the name of F. R. Peagram, who is the treasurer, treasurer. Those dividends went directly to the Maine Company. They didn't go to F. H. Prince & Company at all.

The Member: Well, now, my understanding of that is this: That in the earlier years F. H. Prince & Company was the nominal shareholder of the New Jersey Corporation for the actual ownership of the Maine Corporation.

The Witness: That is right. They were the nominal—

The Member: Whenever the dividends were received, or, rather, were paid on those shares by the New Jersey Company, they were received by the nominal shareholder, namely, F. H. Prince & Company?

The Witness: That is right.

The Member: And F. H. Prince & Company on its books credited those amounts as cash received to the account, the running account, of the Maine Company, whose account was to that extent, either the debit balance was diminished or the credit balance was increased?

The Witness: That is it, exactly.

The Member: All right.

Now, that is as to the earlier ones?

The Witness: That is right; yes, sir.

The Member: Now, later, as I understand it, the Maine Corporation through its treasurer became the actual shareholder of record on the books of the New Jersey Corporation.

The Witness: I refer, of course, Your Honor, as I previously testified, in 1922 F. H. Prince & Company continued to buy Maine Company common stock, or, at least, it continued to buy New Jersey Company common stock, and the Maine Company paid cash for that common stock, and that

was immediately turned over to the treasurer of the Maine Company.

The Member: Now, then, with respect to all of the shares that were then of record, on the New Jersey Company's books as owned by the Maine Corporation through its treasurer—

The Witness: That is right, sir.

The Member: —the dividends on those shares were paid by the New Jersey Corporation directly to the Maine Corporation without the intervention of Prince & Company?

The Witness: That is right.

The Member: And on the Maine Corporation's books they were simply treated as cash received and put in the cash account; is that right?

The Witness: And credited, of course, to Maine Company; that is, the dividends.

The Member: But they then lost their identity entirely just as ordinary cash?

The Witness: That is right. That is right.

I might add, however, to my answer, that when those dividends to the first group that were credited on the books of the F. H. Prince Company to the Chicago Stock Yards of the Maine Company, that the Maine Company then picked up on their books that dividend. In other words, they made a debit to so-called bankers and credited their income account so that the Maine Company got the dividend on all of the shares.

X-Q. 240. (By Mr. Pierson). When you say the Maine Company got the dividends on all the shares, was that paid out by F. H. Prince & Company yearly to the Maine Company? Were they immediately transferred over? A. No. I thought I explained that, Mr. Pierson, this morning, when I said that those were credited to the open account.

X-Q. 241. I see.

The Member: And that was done currently, wasn't it?

The Witness: It was done from—

The Member: You didn't wait until the end of the year?

The Witness: Oh, no.

The Member: As soon as the dividends were received by Prince & Company, they were credited to the Maine Corporation's account?

The Witness: That is right, exactly, sir, and also immediately picked up on the Maine Company's books who made a corresponding entry.

X-Q. 242. (By Mr. Pierson). Mr. Donovan, you testified in your direct testimony, I believe, that interest was paid by F. H. Prince & Company to the Maine Company on the borrowings. A. That is right.

X-Q. 243. Now, was that interest paid on the borrowings of cash? A. Yes, just on the borrowings of cash.

X-Q. 244. There wasn't any interest paid on the borrowings of securities, was there? A. No, sir.

X-Q. 245. Do you know whether or not, Mr. Donovan, Mr. Prince in so far as the interest he paid to the Maine Company is concerned, or the interest which was paid by F. H. Prince & Company, was claimed by Mr. Prince as a deduction on his income tax returns in those respective years when that interest was paid? A. In the particular years?

X-Q. 246. Well, in the years in which this interest which you have testified to this morning was being paid on these borrowings from the Maine Company. In those years didn't Mr. Prince claim that as a deduction on his income tax return? A. Yes, Mr. Prince did. He paid it in cash, of course. By check, rather.

X-Q. 247. Will you turn, Mr. Donovan, to S-65? Do you have the stipulation there? A. I have a copy of it.

X-Q. 248. Before you? A. This is a copy.

X-Q. 249. I believe you testified this morning, Mr. Dono-

van, with respect to approximately three million odd dollars which was loaned by Maine Company to Mr. F. H. Prince or F. H. Prince & Company; is that correct? The approximate amount was three million or three million and a half. You testified as to three particular items which approximated some three million, three million and a half dollars.

Mr. Welch: I don't understand—

A. No, I don't think I did. I don't recollect it, anyway.

X Q. 250. (By Mr. Pierson). You testified that there was some money loaned with which Mr. Prince bought Armour & Company stock. Did you not? A. No, I didn't testify to that.

X Q. 251. Well, just what was it? Just what were the circumstances with respect to the money which was loaned by the Maine Company to Mr. Prince with regard to his purchase in Armour & Company, purchase of stock in Armour & Company? A. The Maine Company didn't loan Mr. Prince any money to purchase any interest of Armour & Company. I beg your pardon.

Will you repeat the question, please?

(Question read.)

The Witness: Oh, that is all right.

A. (Continuing) In 1933—I should start out by saying, the money wasn't loaned to Mr. Prince; it was loaned to F. H. Prince & Company in 1933, and F. H. Prince & Company purchased a substantial amount of Armour & Company stock—oh, a million and sixty-seven thousand dollars worth.

X Q. 252. (By Mr. Pierson). And what was that amount which was loaned at that time? What was the account amount? A. That was in 1933.

X Q. 253. 1933. A. Well, I don't think, Mr. Pierson, that you can put one particular loan against the other unless

at least, I can't. For instance, the $1,200,000 in 1927, you recollect I said Mr. Prince borrowed that? And he borrowed it and did two definite things, and now in 1933, for example, when this stock was bought, there was a million dollars borrowed and was used to purchase Armour & Company stock.

X-Q. 254. By F. H. Prince & Company? *A.* By F. H. Prince & Company; that is right.

X-Q. 255. Now, Mr. Donovan, showing you Petitioner's Exhibit 65, or, rather, S-65, in the years 1930, 1932, and 1933, what is the total amount of borrowings therein stated? Will you state for the record? *A.* You mean at the end of each year?

X-Q. 256. Yes, at the end of each year by F. H. Prince & Company and F. H. Prince combined. *A.* The total. At the end of 1930 F. H. Prince & Company and F. H. Prince owed the Maine Company on notes $2,529,400. At the end of 1932, F. H. Prince & Company and F. H. Prince owed the Maine Company on notes, $3,408,000. At the end of '33, F. H. Prince & Company and F. H. Prince owed to the Maine Company on notes $4,848,000.

X-Q. 257. Now, Mr. Donovan, those amounts which you have just stated do not cover or covers more than the amounts to which you testified this morning with regard to those loans to F. H. Prince & Company and which were individually specified; does it not? That is, with regard to the money which was used by Mr. Prince for the building of the house and the amount which was used by F. H. Prince & Company for the purchase of stock in Armour & Company, and there was one other item, as I recall, but the amounts herein stated are more than the amounts which you stated this morning? *A.* I didn't state any figures, Mr. Pierson. I mentioned reasons why the money was borrowed, and the reasons I feel and am quite sure cover the borrow-

ings of 1933. I didn't mention any figures, as I recollect it.

X-Q. 258. Well, all of those figures contained in S-65 with respect to 1930, '32, and '33, to which you have just made reference, is not inclusive of those items that you spoke of this morning? A. It includes those items; yes.

X-Q. 259. It includes those items? A. But I didn't put any figure on items this morning.

X-Q. 260. Mr. Donovan, I show you S-52, which is attached to the stipulation, and ask you to turn to—which represents the balance sheet of the books of the Maine Company, and ask you to turn to the asset side of the balance sheet beginning with the year 1921, and I further ask you to state in what asset account these loans to which you have been testifying appear, and when I say "these loans," I mean the loans from the Maine Company to Mr. F. H. Prince and F. H. Prince & Company throughout the years 1921 to 1933. A. That would be under the Maine Company balance sheet under notes receivable.

X-Q. 261. Under notes receivable? A. That is correct.

X-Q. 262. And that is, this item of notes receivable doesn't necessarily designate the amounts of those loans; that is, it contains other notes receivable as well as those loans? A. Beginning at 1921—if you want me to take them in sequence, I can give them to you—in 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930 contain just the notes due from F. H. Prince and F. H. Prince & Company.

In 1931 there is some other notes included in there.

X-Q. 263. How about 1932 and 1933? A. In 1932 there are other notes in the accounts, and in 1933 the only notes in that account are the F. H. Prince and F. H. Prince & Company.

X-Q. 264. Mr. Donovan, are you familiar with the way the Maine Company handled the excess of the 9 percent guarantee of dividends on the so-called guaranteed stock

which was out; of New Jersey Company guaranteed stock which was guaranteed by the New Jersey Company?

Mr. Welch: Guaranteed by the New Jersey Company?

X Q. 265. (By Mr. Pierson). Guaranteed by the Maine Company, pardon me.

The Witness: Would you read that question, please?

(Question, as amended, read.)

A. I don't quite understand that question, Mr. Pierson.

X Q. 266. I will attempt to reframe the question for you, Mr. Donovan. A. Thank you.

X Q. 267. Can you state how the Maine Company treated on its books the amount received from the New Jersey Company in excess of the 9 percent guarantee which the Maine Company had made on the stock of the New Jersey Company, on the common stock of the New Jersey Company.

A. Well, if I understand you correctly the Maine Company only received from the New Jersey Company dividends on the common stock, and the preferred stock that it owned on the certificates in the name of F. H. Prince & Company as nominee, a/c Peagram, as treasurer.

X Q. 268. The excess of the amount which was received by the Maine Company from the New Jersey Company, is all I am attempting to get you to answer to, Mr. Donovan.

As I understand it, the Maine Company pays the 9 per cent guarantee on the common stock of the New Jersey Company; that is the guaranteed stock.

That it receives dividends from the New Jersey Company in excess of that amount.

How did the Maine Company treat that excess on its books?

A. Well, I repeat, that is not paid to us by the New Jersey Company.

X Q. 269. Just how is it handled on the books? A. We receive dividends—

The Member: Wait a minute. "We", you are in a lot of corporations.

The Witness: I beg your pardon.

The Member: Go ahead.

4. The Maine Company receives dividends from the Chicago Junction Railway Company and the Union Stock Yards and Transit Company.

The Member: Take the situation: Is it the fact that the Maine Company, as the shareholder of the New Jersey Corporation, did receive dividends in excess of 9 percent?

The Witness: Well, Your Honor, those dividends —

The Member: I say, is that the fact, did it or didn't it?

The Witness: We did not receive dividends from the New Jersey Company directly for any earnings over 9 percent.

The Member: Did the New Jersey Corporation declare and pay dividends in excess of 9 percent on this guaranteed stock?

The Witness: No, sir.

The Member: That is the answer.

Mr. Welch: I can clear it up. There was a by-pass agreement by which —

The Member: I don't want you to clear it up for the moment. I want to get it straight before Mr. Pierson can get an answer. I want the hypothesis established, and, as I understand it, there is no such hypothesis.

Mr. Welch: If Mr. Pierson would think about it a moment he probably would know what it is.

The Member: He is probably thinking about it a great deal.

X-Q. 270. (By Mr. Pierson). Mr. Donovan, let me state it this way: The excess that the Maine Company receives on the stock of the New Jersey Company, common stock of the New Jersey Company, which it does not own and the guaranteed 9 percent on which the New Jersey Company

pays, how is that treated on the Maine Company's books?

Mr. Welch: I think I will object to that on the ground that I don't understand it.

The Member: Mr. Pierson, you are stating a situation of fact. If the fact does not appear of record your hypothesis is not worth anything.

Here you are asking this man a question about how the Maine Company treats it on the book which, by its own hypothesis, it never receives. Is that what you intended?

Mr. Pierson: No.

The Member: That's what you said: Upon a stock which it does not own and in that regard you were prompted by your associate here to change it from the stock which it does own to the stock it does not own.

Then you assumed it received dividends on a stock it didn't own and then asked how it accounted for excess dividends on stock it didn't own. Now it is a balled-up mess.

X-Q. 271. (By Mr. Pierson): Mr. Donovan, there is in evidence a contract upon which dividends are paid, as you have stated, by the Transit Company directly to the Maine Company under that contractual agreement. Now, there is also paid from the New Jersey Company to the Maine Company dividends under that contractual agreement.

I am asking you as to how the Maine Company treats that excess of dividends that it receives over the nine per cent which is paid to the guaranteed stockholders, common stockholders of the New Jersey Company.

A. I think I understand the question now.

That agreement, Mr. Pierson, referred to, has directed the Chicago Junction Railway Company and the Union Stock Yards and Transit Company to send their dividends directly to the Maine Company.

In other words, they are by-passed, if I may use that word, through the New Jersey Company to the Maine Company, but there is no declaration in the books of the New Jersey Company because it is an agreement of 1914, I believe.

X-Q. 272. How does the Maine Company handle that on its books? *A.* They use it as income; that is, they treat it as income, I mean.

X-Q. 273. And the New Jersey Company pays out the nine percent on the dividend which is guaranteed by the Maine Company? *A.* Well, under that same agreement.

The dividend is paid but it is sent from the West to the bank, who distributes the dividend, but the New Jersey Company pays nine percent on its common stock.

That is, during these years 1930 to 1933, I suppose you are talking about?

X-Q. 274. That is right. *A.* That is right; yes, sir.

Mr. Pierson: That is all.

Mr. Welch: That is all, Mr. Donovan. (Witness excused.)

The Member: Now, what is your program, gentlemen?

Mr. Welch: I am quite ready to state I have only two and possibly three more witnesses all of whom are experts, and as I stated to Your Honor yesterday I would like to start the expert testimony tomorrow, if it works out to Your Honor's satisfaction.

The Member: You mean that will be your whole case, three more expert witnesses?

Mr. Welch: Possibly only two but perhaps three.

The Member: Will the Government be ready to proceed, then, with its case?

Mr. Clark: Yes. I shall have three and possibly four experts.

The Member: How long do you suppose these experts will take?

Mr. Welch: An expert is generally measured by the length of his cross-examination. I should say my first expert, who goes on tomorrow, will probably take not over an hour in direct and very likely somewhat less. That is the only promise I can make.

The Member: I don't want a promise, I just want an estimate as best you can make it. Are these experts all experts in the same field; directed to the same facts?

Mr. Welch: They are, if Your Honor please.

The Member: So that the cross-examination of the first one would probably bear the brunt of the attack and leave the other two with fairly less cross-examination, I suppose.

Mr. Welch: I would think so.

The Member: You think your case will all be in tomorrow?

Mr. Welch: I should think that very likely.

The Member: Some time tomorrow morning or afternoon?

Mr. Welch: No, afternoon, I would guess.

The Member: So that gives the Government notice enough so that it will be ready to proceed—

Mr. Clark: Ready to proceed on Friday, yes.

The Member: Won't you be ready tomorrow afternoon?

Mr. Clark: I wouldn't want to promise that and I would rather have, if Your Honor would be lenient in that regard, I would rather start on Friday.

The Member: That will depend somewhat on how much

time tomorrow we will have available. If this case goes on most of the day it wouldn't be wasting very much time to hold over until Friday.

If, on the other hand, the Petitioner's case is finished by the noon hour, or shortly after the noon hour, I should think we ought to not suspend then and waste all the rest of the day.

Mr. Clark: I have no desire to delay the proceedings, as I think Your Honor is quite aware.

The Member: I should think it would be reasonable to have your witnesses ready to go on tomorrow afternoon, if not before. I think we can act on that assurance, but I shouldn't think we should suspend for the whole afternoon tomorrow.

Let us proceed on that assumption. We can tell better by tomorrow luncheon time what the situation is.

Mr. Clark: Oh, yes.

The Member: We will suspend now until 10 o'clock tomorrow morning.

(Whereupon, at 4:20 o'clock, p. m., February 1, 1939, the hearing in the above-entitled matter was adjourned.)

[Title omitted.]

FOURTH DAY.

REPORTER'S MINUTES.

[Filed February 6, 1939.]

Hearing at Washington, D. C., on the 2nd day of February, 1939, at 10 o'clock a. m.

The hearing in the above-entitled proceeding was resumed on this the 2nd day of February, 1939, before the HONORABLE JOHN M. STERNHAGEN, Member of the United States Board of Tax Appeals, pursuant to adjournment heretofore taken.

Appearances: (Same as heretofore noted.)

PROCEEDINGS.

Mr. Green: If Your Honor will recollect, Exhibits 11 and 12 were introduced with the agreement that photostatic copies might be substituted for the originals.

Exhibit 11 was the report of the Produce Terminal Corporation for the month of December, 1933, and Exhibit 12 was the report of the Transit Company for the same month. I have the photostatic copies here now, and I want to make just one observation about them for the record. Figures which appear in parentheses on these photostatic copies were in red on the original exhibit.

I offer in evidence a sheet headed "Chicago Stock Yards Company," which contains quotations of New Jersey common stock and other data for the years 1911 to 1933, inclusive. I understand, Mr. Clark, there is no objection?

Mr. Clark: No objection.

Mr. Green: May that be marked Mr. Ray?

The Clerk: Petitioner's Exhibit No. 38.

(The document so offered and received in evidence was marked "Petitioner's Exhibit 38," and made a part of this record.)

Mr. Green: On page 31 of the stipulation there is a reference to a plan which was prepared in accordance with the requirements of the decree in the Packers Case. That decree has been introduced in evidence as Petitioner's Exhibit 23. On that page it is stated that a copy of the decree in the same case, under date of February 27, 1920, in accordance with which the plan which is attached to the stipulation marked S-57 was prepared may be offered in evidence.

I offer in evidence a decree in the Packers Case, dated February 24, 1921, approving that plan.

Mr. Clark: No objection.

The Clerk: Petitioner's Exhibit 39.

(The document so offered and received in evidence, was marked "Petitioner's Exhibit 39," and made a part of this record.)

Mr. Green: I understand that this Court takes judicial notice of the statutes and decisions in the several States of the United States in accordance with the District of Columbia Equity Rules. I wish to call the attention of the Court to the New Jersey Revised Statutes of 1937, Title 14, Chapter 11, Section 14:11-8. That statute provides, in brief, that the charter of a New Jersey corporation may be extended by a vote of two-thirds, each class of stock entitled to vote.

I also wish to call the Court's attention to the New Jersey Revised Statutes of 1937, Title v-4, Subtitle 2, Chapter 4, Section 54:4-1, and the following sections: These sections provide that, in brief, all property, tangible and intangible, of New Jersey corporations, are subject to a local personal property tax in New Jersey, and in connec-

tion with that statute I should like to call the Court's attention to the case of New Jersey Bell Telephone Company, the City of Newark, 118 N. J. L. 496, 193 Atlantic 844, and to the case of Newark Fire Insurance Company, the State Board of Tax Appeals, 118 N. J. L. 525, 193 Atlantic 912.

Mr. Welch: Mr. Blough.

Mr. Clark: Just a moment, Your Honor. There is another gentleman whom I would like to ask to sit at the counsel table here, and I am wondering if I can have another chair, in some way?

Mr. Welch: I think there is a chair to spare, so to speak. There is one here, Mr. Clark.

The Member: We can get a chair for you.

Mr. Green: If Your Honor please, in Exhibit 39, the wrong date was given. The date of that decree was February 24, 1921.

MR. CARMAN G. BLOUGH

called as a witness by and on behalf of the Petitioner, and, having been first duly sworn, was examined and testified as follows:

Direct Examination:

Q. 1. (By Mr. Welch). Your full name, please, Mr. Blough? A. Carman G. Blough.

Q. 2. And were you sworn just now? A. I was.

Q. 3. Where do you live, Mr. Blough? A. 206 Bell Avenue, Highland Park, Illinois.

Q. 4. And what do you do, sir? A. I am associated with the public accounting firm of Arthur Anderson & Company.

Q. 5. And they are located where? A. The office with which I am connected is the home office in Chicago, Ill. We have offices all over the United States.

Q. 6. Mr. Blough, I wish if you would, sir, that you would give us a little sketch of your life, paying particular at-

tication, certainly, when you reach that part of it, to your experience in so far as it has had any relationship to corporate finance and financial practices of corporations. A. I am a graduate of Manchester College and have had four years of graduate training in Columbia, Chicago, Wisconsin, and Harvard Universities. I hold a Master of Arts degree in business economics from the University of Wisconsin, and have completed the residence and general examination requirements for the Ph.D. and business economics at Harvard University.

Q. Mr. Blough, could I interrupt for a moment? I am under the impression you are going pretty rapidly for our very competent stenographer, and I suggest you go a bit more slowly on this because it comes pretty rapidly from you. A. I am sorry.

I taught accounting and corporate finance at the University of Wisconsin, at one time. I was professor of accounting and head of the accounting department at the University of North Dakota. I was professor of economics and head of the social science department at Armour Institute of Technology and special lecturer in accounting at American University. I am a certified public accountant in the States of Wisconsin and North Dakota and was, at one time, a member of the Wisconsin State Board of Accountancy. I was at one time employed by the Wisconsin Tax Commission and while with that organization I was first a corporation field auditor; subsequently, assistant chief in the income tax division in charge of corporation income taxes and subsequently chief of the Public Utilities Division of that Commission. As chief of the Public Utilities Division it was my duty to value the railroads and public utilities in the State of Wisconsin for tax purposes and to recommend assessments of such properties to the State Tax Commission which was responsible for that function. I was at one time

secretary of the Wisconsin State Board of Public Affairs—

Q. 8. Could I interrupt you a moment? In this last work that you did, did that involve any analysis of financial statements of companies? *A.* Yes, sir. In the valuation of railroads and public utilities under the so-called unit rule, which is the rule for taxation of public utilities and railroads in Wisconsin, a determination is made of the value of the entire business. Then, for the purpose of obtaining the value of the companies' properties in Wisconsin, an allocation is made to Wisconsin on the basis of various factors that are involved. Now, in arriving at the value of a business as a whole, it is necessary to take into consideration the financial condition of the business, its financial history, its prospects, economic conditions in general which would reflect on the probable value of that business in its entirety.

Q. 9. Thank you, sir. Now you may go ahead, if you will, on later experience. *A.* For a period of time I was secretary of the Wisconsin State Board of Public Affairs, and as such I was the budget director of the State of Wisconsin and had charge of specifying the records and accounts to be kept by the various State Boards, departments, commissions, and institutions. I had charge of the auditing of those bodies and making recommendations to the Legislature on appropriations; also to advise the Governor with regard to the financial affairs of the State. For a period of three years, along with other duties, some of these other employments I have mentioned, I was special appraiser for the Dane County Court.

Q. 10. In the State of Wisconsin? *A.* In the State of Wisconsin. Dane County is the county in which Madison, the capital, is located. The Dane County Court under the statute of Wisconsin as it existed at that time has jurisdiction over the estate of persons who died resident of Dane

County and also over the inheritance taxation of properties in Wisconsin and securities in Wisconsin corporations possessed by persons who died non-residents of the State of Wisconsin, so that in the course of my work as special appraiser it was necessary for me to evaluate these securities of Wisconsin corporations that were left in the estates of persons who died as residents of Dane County or as non-residents of the State of Wisconsin, and in order to arrive at the value of those securities it was necessary to consider the financial history of the corporations that had issued the securities and to make the best estimate possible as to the probable future prospects of those companies in order to reflect the value of their securities at the date of death. Of course, if the securities were listed on national securities exchanges the problem was simple, but a very great number of them had no market at all except occasional markets over the counter. At one time I was consulting accountant for the Illinois Commerce Commission which is the public utility regulatory body in the State of Illinois, and from shortly after its creation until the last July I was associated with the Securities and Exchange Commission.

Q. 11. That is the Federal body? A. The Federal Securities and Exchange Commission.

My first connection with that Commission was as an analyst and as an analyst it was my duty to analyze the financial statements filed—the registration statements filed by corporations seeking to sell their securities in interstate commerce or through the mails, and, therefore, subject to the Securities Act of 1933. It was my duty to study those registration statements for the purpose of determining whether or not significant information necessary to the proper appraisal of the value of securities was included, or whether there was any misrepresentation of information

that would materially affect a valuation of securities. Subsequently I was assistant chief or assistant director in the registration division.

Q. 12. May I interrupt once more, I think once again we have a tendency to go a little fast. A. I am sorry.

As assistant director in the registration division, I had charge of the registration of securities that were to be listed on national securities exchanges, and as assistant director it was my responsibility to supervise the analysis and examination of the registration statements filed under the Securities Exchange Act of 1934, for the purpose of determining whether or not the necessary information for a sound evaluation of securities was contained or whether there was a material misrepresentation. Subsequent to that, I was chief accountant for the Securities and Exchange Commission, and as such I had responsibility for the accounting policies and the general administration of the accounting examinations of statements filed with the Commission under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Public Utility Holding Company Act of 1935. In addition to the continuation of association with the analysis of financial statements under the 1933 and 1934 Act, my position as chief accountant made it necessary for me to work closely with the Public Utilities Division of the Commission. The Public Utilities Division had charge of the administration of the Holding Company Act and under that Act the Securities and Exchange Commission has authority in great detail over the financial practices of public utility holding companies and their subsidiaries. For example, if a holding company or its subsidiary wished to revise its financial structure in any way, it was necessary

Mr. Clark: Your Honor, I want to object at this point.

The Member: I don't think this involved discourse on principles is necessary to qualify the witness.

Mr. Welch: As to what he actually did?

The Member: As to what he actually did, well enough, but if he takes his ideas of what ought to be done, that doesn't help.

Q. 13. (By Mr. Welch). Mr. Blough, just what you actually did in the way of analyses of these holding companies and subsidiary companies. *A.* When a statement was filed by a public utility holding company or its subsidiary asking permission to revise its financial structure or to declare dividends, I analyzed the financial statements of the company and made recommendations to the Commission as to its policies.

Q. 14. Do you belong to any societies that would be of any interest to us? *A.* Well, I am a member of Beta Gamma which is an honorary commerce fraternity, scholastic fraternity; of Beta Alpha Psi, which is an honorary scholastic accounting society; of the American Accounting Association, which is made up largely of university professors in accounting and others interested in the development of accounting principles, and of the American Institute of Accountants, which is the national organization of practicing public accountants. I am vice president of the American Accounting Association and a member of the committee on accounting procedure of the American Institute.

Q. 15. Have you testified before as an expert? *A.* Yes, sir; I have testified on various occasions as an expert in accounting and also as an expert in finance and financial analysis.

Q. 16. Now, I take it from what you have said you have had repeated occasions which requires study on your part of corporations and their financial set-ups. *A.* Yes, sir. I think, as I have indicated from the history of my life,

my whole working life has been devoted to work which necessitates the analysis of financial statements in one way or another.

Mr. Welch: I offer the witness as an expert who will testify on the point as to whether or not the funds of the Maine Corporation have been accumulated beyond the reasonable needs of its business.

The Member: Do you want to cross-examine now, as to qualifications?

Mr. Clark: Yes.

The Member: You may do so.

Cross-Examination.

The Member: You know the reason I am facing the other way (addressing the witness) is that your rocking on that chair distracts me so I can't pay attention to your testimony.

The Witness: I am sorry, Your Honor. I will stop that. Could I have a straight chair, please?

Mr. Welch: Yes; that would be a simple solution.

Mr. Green: I have the only one in the room.

(A straight chair was given to the witness.)

X-Q. 17. (By Mr. Clark). Now, Mr. Blough, you say you graduated from Manchester College. When was that? A. 1917.

X-Q. 18. 1917. Now, what did you do immediately after? The reason that I am asking you this and going to ask you further questions is because you went so rapidly that I couldn't possibly follow you, there were so many activities you seemed to have been engaged in. What did you do immediately after that? A. Well, immediately after that I taught in Bridgewater College, Bridgewater, Va., which I didn't mention as part of my qualifications.

X-Q. 19. For how long did you teach there? A. One year.

X-Q. 20. What did you teach? A. I taught accounting and finance and commercial law.

X-Q. 21. And then what did you do? A. And then I went to Fon du Lac, Wisconsin, where I taught in the high school and practiced accounting on the side.

X-Q. 22. How long did you stay there? A. Two years.

X-Q. 23. Then what did you do? A. Then I went to the University of Wisconsin.

X-Q. 24. And there what course did you take? A. I did graduate work—pardon me. I should have mentioned that before that time, during the summers, I attended Columbia University and Chicago University, which I mentioned in my testimony.

X-Q. 25. During what summers? A. Summer of 1918; summer of 1920.

X-Q. 26. All right.

Now please repeat what you did at the University of Wisconsin. A. I did graduate work in economics and business administration, and instructed in accounting and corporation finance.

X-Q. 27. After that what did you do? A. I went to the Wisconsin Tax Commission. I was with the Wisconsin Tax Commission for five years.

X-Q. 28. In what capacity? A. I was corporation field auditor for about three-quarters of a year. Then I was assistant chief of the Income Tax Division for about a year and a half. Then I was chief of the Public Utilities Division for about two years and a half.

X-Q. 29. As corporation field auditor, what were your duties? A. To go out in the State of Wisconsin and examine the corporations' accounts and records for the verification of their income tax returns.

X-Q. 30. Income tax returns to the State of Wisconsin? A. That is right. Wisconsin had the first income tax, and

X-Q. 31. Well, no. I am just asking you that. Please strike the last answer. Now, as chief of the Income Tax Division, what did you do? What were your duties? A. I was assistant chief, and I had charge of the auditing of the income tax returns of corporations, both in the office and outside in the field.

X-Q. 32. The auditing. Just what do you mean by "auditing"? A. Well, the office audit of an income tax return involves taking the return itself and studying it carefully and examining it for any possible deficiencies. I should think that an officer of the Internal Revenue would know exactly what that is.

X-Q. 33. Well, no. I am asking you. I am asking you. A. I have told you.

X-Q. 34. All right.

The Member: Now, don't be smart about this. The questions are being asked to you respectfully and you are to answer them respectfully.

A. (Continuing) In the field, the field auditing was going into the corporations' accounts and records, and verifying their books to whatever extent seemed necessary, making comparisons with the income tax returns to determine whether or not the returns had been properly filed.

X-Q. 35. Now, in the Public Utilities Division, what were your duties and activities? A. There it was my duty to get all of the information that I could possibly get about the public utilities and the railroads whose properties were valued by the Commission. We got that in various ways. We called for a very comprehensive report from each company which specified financial facts in great detail. We took —we studied the securities markets to determine the price of the companies' securities. We on occasion examined the

accounts of the company to get special light on the policies of the company. We studied the files of the State Railroad Commission, as it was then known, which was the Public Utility regulatory body.

X-Q. 36. When you say "we," you mean yourself, personally? *A.* I and my staff. We sought all of the criteria that we could that would give some indication as to what the value of the company was, determined its earning power from its accounts and from such adjustments as seemed would have to be made to reflect the earning power from the standpoint of the salability of the company, capitalized that income for the purpose of arriving at a valuation.

We got reports from the Interstate Commerce Commission on the physical valuation of the railroads and from the Railroad Commission on the physical valuation of the public utilities in the State,—everything that we could get that would reflect on the value of the property.

X-Q. 37. Now, to what date does that carry your experience? *A.* That carries my experience to March of 1927.

X-Q. 38. Then what did you do? *A.* Then I was in charge of the State Budget, from March—

X-Q. 39. State Budget of what State? *A.* Of the State of Wisconsin.

As I stated, I was secretary of the State Board of Public Affairs, and, as secretary, I was the administrative officer of an ex-officio board that made recommendations on budget. That carries me to September, 1929.

X-Q. 40. What did you have to do in that regard? *A.* Well, in that job, it was—I and the staff examined the accounts and records of the boards, departments, commissions, and institutions. We inspected the properties; we specified the accounts that should be kept, and required revisions of the accounts.

X-Q. 41. What do you mean when you say the accounts

that should be kept? Accounts of what sort? A. Each State board, department, and commission in the State of Wisconsin is required to keep accounts itself. That is, the University had to keep complete records of its own, showing its income and its disbursements. The Tax Commission had to keep detailed accounts of its own. Every board, department, commission in the State had to keep accounts, and those were specified. We had a uniform system which we worked out, and we specified the accounts that they should keep. And then we audited those accounts after the end of the year just as a public accountant would audit the accounts of a private enterprise at the end of the year.

We set up the budget showing the past expenditures and the requests of the institutions and departments for the succeeding year. We inspected the properties and studied the operations of the boards, departments, and commissions, and made recommendations to the Legislature.

X-Q. 42. Recommendations of what sort? A. As to the amount of the appropriations that should be made and the purposes that they should be made for.

X-Q. 43. From the State funds? A. From the State funds; that is right.

X-Q. 44. Now, to what date does this carry you? A. September, 1929.

X-Q. 45. And then what did you do? A. Then I went to the University of North Dakota, where I taught.

X-Q. 46. And what did you teach there? A. I taught accounting for the most part. I was head of the Accounting Department and taught accounting for the most part, but during one semester I taught a course in corporate finance and another one, public utilities.

X-Q. 47. Where did you take your instruction in corporate finance? A. I took courses in corporate finance at

Manchester College, at Chicago University, and at the University of Wisconsin.

X-Q. 48. Well, now, please tell me, or tell the Board, for how long you took those courses at each of those institutions? *A.* At Manchester College I had a course which ran for two years, which was the equivalent of six months. At the Chicago University I took a course for just one summer's session. At the University of Wisconsin, I took three courses that were tied into corporate finance. One, corporation finance itself; one, the analysis of financial statements; and, a third, money and money markets.

X-Q. 49. For how long? *A.* For one year.

X-Q. 50. Did you at any time receive any degree as a result of the courses that you took in corporate finance? *A.* Yes, sir.

X-Q. 51. And what was that? *A.* The Master of Arts Degree.

X-Q. 52. Yes. *A.* In business economics.

X-Q. 53. Where? *A.* University of Wisconsin.

X-Q. 54. And when? *A.* 1922.

X-Q. 55. Was that the result solely of your studies at the University of Wisconsin? *A.* That is right.

X-Q. 56. And for how long did you say that continued? *A.* At the University of Wisconsin?

X-Q. 57. Yes. *A.* I was there two years.

X-Q. 58. Now, I have forgotten just at what point we stopped. *A.* You left me at the University of North Dakota, where I was teaching.

X-Q. 59. Oh, yes. North Dakota. When was that? *A.* From 1929 until 1932.

X-Q. 60. And then what did you do? *A.* Then I went to Harvard University on leave of absence from the University of Dakota.

X-Q. 61. What courses did you take at Harvard Univer-

sity? A. At Harvard University I studied money and banking, public finance, economic theory, public utility economics, and seminar in corporation finance.

X-Q. 62. How long were you there? A. I was there just one full year.

X-Q. 63. And in what department was that? A. I was a candidate for Ph.D. in business economics, and that degree is jointly administered by the graduate school of the College of Economics Department and the graduate school of Business Administration.

X-Q. 64. Did you receive any such degree? A. I did not. I passed the general examinations which leaves nothing to be done except the thesis.

X-Q. 65. Then what did you do? A. Then I went to Armour Institute of Technology in Chicago.

X-Q. 66. Then what did you do there? A. I was head of the economics—of the Social Science Department and taught economics, professor of economics.

X-Q. 67. Now, in that capacity what did you teach or what were your activities? A. Well, I taught a course to seniors which was called "Public Policy," and which related to the relationship between corporations and the Government. I taught a course in business and engineering problems, which took up the financial aspects of the businesses in which engineering problems were basic.

X-Q. 68. What financial aspects do you mean? The aspects relative to the corporations themselves? A. The organization of a corporation and the financing of a corporation, methods of obtaining money and money markets, and so forth, attempting to convey to the engineering students these fundamental financial concepts of the business which they were going into later.

X-Q. 69. How long did you stay there? A. I stayed there until the fall of 1934,—in the summer of 1934,—when I be-

gan to have some correspondence with the S.E.C., which was then just being formed, persons who had been appointed to the S.E.C., and I was appointed by the S.E.C. in the early part of October, but I wasn't able to find—the school was not able to find a successor for me until the last of November. I left the school in the last of November and took up my duties with the S.E.C. the first day of December, 1934.

X-Q. 70. What were you doing with the S.E.C.? A. Well, my first position there was as a security analyst, and that—

X-Q. 71. Well, just tell me what you did in that regard? A. Well, as a security analyst, a registration statement filed under the Securities Act of 1933 would be given to me for examination and analysis. I would go through that registration statement in detail.

X-Q. 72. What is a registration statement? A. A registration statement is a statement that is required under the 19—

X-Q. 73. No. What I want to know is what it is. A. Well, it is a statement filed by any corporation wishing to sell securities in interstate commerce or through the mails to support a prospectus which must be issued by the company in connection with any such sales. And this registration statement is a document that is partly a questionnaire in form set up by the Securities and Exchange Commission which requires answers in detail, and then it calls for any other material information necessary to—I have forgotten exactly the wording of it, but anyway, it requires that any significant information necessary to a financial judgment be supplied.

X-Q. 74. Please tell me what these statements are that have to be made? What sort of statements are they? A. Well, in the first place, it calls for a profit and loss statement for three full fiscal years, and profit and loss state-

ments from the close of the last fiscal year up until a date within 90 days of the date this State registration statement is filed for the registrant. It also requires a balance sheet as of the date within 90 days for the registrant. It requires consolidated profit and loss statements and balance sheets for the registrant, and its subsidiaries. In case there are some subsidiaries that are not included in consolidation, it requires separate statements for them; copies of the charter; copies of the by-laws; copies of the indentures; statements as to the relationship between the registrant and underwriters, and persons in control or affiliated with the registrant; information regarding salaries of significant officers and directors; the names of the officers and directors, and the nature of the business; the history and development of the business.

X-Q. 74. Pardon me just a moment. Now, that was in 1934 that you went to the S.E.C.? *A.* That is right.

X-Q. 75. How long did you stay there? *A.* I stayed there until July 1, 1938.

X-Q. 76. 1938. And then what did you do? *A.* You mean after I ceased being an analyst for the Commission, or after?

X-Q. 77. Yes. *A.* Or after I left the Commission?

X-Q. 78. Well, as I understood it you left the Commission in 1938. Did you cease to be an analyst prior to that time? *A.* Yes, sir.

X-Q. 79. What were you after that? *A.* I was assistant director.

X-Q. 80. Assistant director? *A.* In the Registration Division.

X-Q. 81. In that capacity, what were your duties and activities? *A.* In that capacity I had charge of that portion, of that part of the Securities and Exchange Commission that was responsible for the analysis and examination of the

financial statements—of the registration statements that were filed under the Securities Exchange Act of 1934, and those statements are very similar in their nature to the ones I just described for the 1933 Act.

X-Q. 82. Now, then, what did you do after July 1, 1938? *A.* After I was assistant director, I was also something else with the Securities and Exchange Commission.

X-Q. 83. I see. Well, you were still with the Securities Exchange? *A.* No, sir.

X-Q. 84. When did you leave there? *A.* July 1, 1938.

X-Q. 85. Then what did you do? *A.* I went with the firm of Arthur Anderson & Company, a public accounting firm.

X-Q. 86. What are your duties there? *A.* My duties there are to coordinate the policies of the various offices that the company has throughout the United States. We are in the public accounting business, public accountants and auditors. We have our offices scattered from Coast to Coast, from Milwaukee to Houston, and in an organization of that kind it is a real problem to keep those widely separated offices following the same principles and procedures of accounting and auditing, and to follow the same policies in general. My primary responsibility with the Commission—with the firm, is to coordinate those policies.

Mr. Clark: For what purpose are you offering this witness?

Mr. Welch: The purpose was stated.

Mr. Clark: Well, I just wanted—

Mr. Welch: I beg your pardon. It is expected that he will testify that the earnings—

Mr. Clark: Oh, excuse me just a moment. May I interrupt before you go into that?

Mr. Welch: You admit his qualifications?

Mr. Clark: No.

Mr. Welch: I offered him as an expert who will testify that the gains or profits of the Maine Company, the taxpayer in this case, have, in his opinion, not been allowed to accumulate beyond the reasonable needs of the business.

Mr. Clark: I don't think the witness is qualified to answer that, Your Honor. It seems to me that he is primarily an accountant and auditor, and I feel he is not qualified.

The Member: I have serious doubt and I have expressed this before as to whether the subject matter is the subject matter which is to be proven by so-called expert evidence. That has nothing to do with the qualifications of the witness but I would like to have that considered before we go any further. I am trying to find, here, in the Supreme Court's opinion covering the National Grocery Company case, which is the only opinion of the Supreme Court that relates to this section. What I am sure is here, now, is this quotation from Judge Learned Hand's opinion in the United Business Corporation case in which a question of the constitutionality of this provision of the statute was considered with regard to this accumulated surplus provision, and it was said there, and I now have the quotation here: "Judge Learned Hand said in *United Business Corporation* v. *The Commissioner*, 62 F. (2d) 754, 756: "—which is quoted by the Supreme Court in the Grocery case, in 304 United States 282 at page 290, this language:

"Standards of conduct, fixed no more definitely, are common in the law. The whole law of torts is pervaded by them: much of its commands are that a man must act as the occasion demands, the standard being available to all. The vice of fixing maximum prices is that it requires recourse to stands beyond ascertainment by sellers, by which therefore they cannot in practice regulate their dealings. That is not true of the reasonable needs of a business, which is immediately within the ken of the managers, the supposititious standard, though no indeed objective, being as accessi-

ble as those, for example, of the prudent driving of a motor car, or of the diligence quired in making a ship seaworthy, or of the extent of proper inquiry into the solvency of a debtor."

There the quotation ends. I think that that indicates rather that the subject is not an expert subject at all but is a subject upon which the Board, as the trier of the facts, must evaluate the direct evidence of the facts without regard to what any professional man, be he a certified public accountant or a financier or what not, and no matter how well qualified he is to testify on the subject hypothetically.

I should think that the Witness Prince, for example, might have something of interest and value to say on this subject as to the reasonable needs of the business, but I doubt very much whether a man of this man's qualifications has anything to contribute that will enable the Board better to decide the case. What do you say about that?

Mr. Welch: Well, as I think Your Honor will remember, expert evidence was offered in the Grocery case.

The Member: Yes.

Mr. Welch: And I have felt from the time I have met this fascinating case that it was, to a notable extent, a parallel of the National Grocery case, and nowhere throughout the course of that case did I observe the difficulty which Your Honor is now suggesting.

As we, all of us in the room, know, expert evidence was offered. It is like, I suppose, an evaluation of the question. What experts say is thought to be of some aid to the fact-finding body.

The Member: Let me ask you, before you go any further: What is an expert in this field?

Mr. Welch: Your Honor puzzles me by the question. I am not sure—

The Member: Is it any one who can express an opinion?

Is he an expert? I would like to have you liken, if you can, or will an expert in this field compare to an expert, for example, in the scientific or medical field? There you have, unquestionably, some esoteric knowledge that is not available and is not probably appreciable or appreciable by an ordinary person like myself, but I take it that the Board of Tax Appeals has got the job of determining this question of the reasonableness of the accumulation for the needs of the business, if that be properly in issue in any case. Who is the expert?

If the question is similar to the question of negligent driving in a tort case, do you put an expert on the witness stand as to the reasonableness of his care in driving the car? I suppose not; do you?

Mr. Welch: No.

The Member: That is the question that the jury has to decide, and it has to decide it from its common knowledge of ordinary affairs of life, but I am unable to see what the nature of the expert question is in this case and after that I am unable to know what are the qualifications of an expert in this field. Certainly if is not a man who happens to have gone to school.

Mr. Welch: Could I take the doctor example that Your Honor put, for a moment?

The Member: Yes.

Mr. Welch: Let us suppose that we are trying, here, as some of us have, a malpractice suit against a doctor, and the doctor is accused of not having lived up to the standards of conduct in his profession in that vicinity.

You then call to the stand other doctors and experts and they say, "We know what doctors do. We know the standards of conduct of doctors in this vicinity. These are the standards, and in my opinion this doctor lived up to those standards."

Now, in this case, we are testing here the conduct of the managers of the Maine Company in running this business. The accusation, so to speak, is that they acted unreasonably; they accumulated funds quite beyond the reasonable needs of the business, and so, as in the doctor case, we call an expert and we ask him to appraise the conduct of these men in their field, as the doctor's conduct is appraised, and have them say to the Board from their experience whether or not that conduct was reasonably prudent conduct in that particular field, and I thought I—

The Member: But this man hasn't been in that particular field.

Mr. Welch: I thought I heard Your Honor say his qualifications seemed to you excellent but you were doubtful about the propriety of receiving any testimony.

The Member: His qualifications are excellent in so far as he has demonstrated he is a man of learning and a man of education but not a word as to his ability to manage a stock yards or any such corporation as the Petitioner, here.

I suppose if he were an expert in that field they would have hired him to run the stock yards long ago.

Mr. Prince got $150,000 a year for doing it.

Mr. Welch: Your Honor will have observed in his testimony as to what he did with the S.E.C.; he studied, in particular, in the utility fields, the conduct of those firms and the question of their dividend policy and the reasonableness of it. That experience alone, over so long a period and so many corporations, would qualify this witness to say to us whether or not the people that ran this enterprise measured up to the standards of conduct in that business in declaring dividends or declining to declare them.

The Member: I have very serious doubt about it.

I see my friend Dr. Friday in the room. He is no doubt going to be called in this case, as he has been in other cases.

and he has heard me express my doubt as to his qualifications in a case like this involving 104 which had nothing to do with stock yards.

Is this man an expert in any business that the Commissioner may see fit to say has brought itself within section 104 merely because he knows how to analyze balance sheets and determine from the Securities and Exchange Commission's standpoint whether there shall be a registration of a prospectus or securities to be covered by a prospectus?

It seems to me the field is so wide it is impossible to conceive of as being an expert field for the purposes of the application of this section, however expert it may be for other purposes.

I am glad to hear your view on it, and I think probably I will have to receive the evidence only because there is some doubt about it, but I have my own view that it is all of very scant help.

Some day maybe the law will be established on it. I tried to do my part in the Rands case, to take the question up, but they settled that case on appeal and we haven't any more law now than we had then.

Mr. Welch: I would like to say this, if we were trying the case to Your Honor alone I would be delighted to close the case without expert evidence on either side.

As I understand it, the case will be reviewed by other members of the Board, and it is thinkable that other members of the Board might find some assistance in what an expert of this type will say.

It is my hope that you will receive the evidence although it is clear in my own mind it will not be given great weight by you.

The Member: Let me ask you another question in an entirely different field, and that is as to the way this ques-

tion arises, and I have been struggling with that ever since the case began.

The Commissioner made no finding as to the unreasonable accumulation in business. He hasn't said that that is why the corporation is to be taxed with a 50 percent additional tax, and that tax is only imposed when the purpose—that is to say, the corporation is availed of for the purpose of enabling its shareholders escape the surtax through the nondistribution of its profits and then the unreasonable accumulation is added in the suit as making a prima facie case. How does this question get into the case?

Is it because the taxpayer on his own account saw fit to allege a negative which the Commissioner denied?

The taxpayer said, "It ain't so," and the Commissioner says, "I deny it ain't so;" and you come here with a most peculiar issue and I still don't know what the issue exactly is and what it is this evidence is now intended to establish affirmatively.

Mr. Welch: If Your Honor please, it is not a happy situation for a lawyer. We have this blanket determination and as you point out quite accurately there is no allegation on the part of the Commissioner that we did unreasonably accumulate, but I am quite confident that if Your Honor sat here instead of there you would feel we were not doing our duty to our client unless under that blanket allegation we negative this possibility of unreasonable accumulation.

The Member: Don't misunderstand me. I am not criticizing you or anybody else. I am seeking to get in my mind what the mode of thought is upon which I must proceed in considering this evidence.

I want your thought about that. I am not suggesting or even intimating that you should not do this. I want to know the theory upon which you are proceeding; that is, as one lawyer to another.

Mr. Welch: As I have said to Your Honor, I cannot, as the pleadings stand, I cannot take my seat and think I have done my job without at least attempting to prove, if Your Honor will or will not permit, at least attempting to prove we did not unreasonably accumulate.

My own theory is that the Commissioner's action and the present case in court leaves this issue open, and I am confident that if you ask my enemies they will say to you that they intend to argue with the utmost enthusiasm that we have unreasonably accumulated surplus.

The Member: I am going to give them the opportunity to make that argument, and I hope it will be at the close of the trial in this case because I don't want the case to be submitted without knowing more than I do now, after three days, as to what the posture of the case is.

I am just taking this opportunity to get your view for the support of this type of evidence you are now intending to put in.

Mr. Welch: Well, only there is one other word that I could say; there is, of course, the theory that the assessment by the Commissioner carries with it a determination of the necessary facts to support that assessment—

The Member: But this is not a necessary fact to support that assessment. This subdivision (b) seems to me not to be a necessary fact at all. It may be a fact.

The Commissioner may determine it and if he determines it then it is a prima facie case unless you disprove it, but he hasn't determined it. He just has said that 104 is applicable, and all 104 does is to say that if the surplus is not distributed or corporations availed of to enable the stockholders to escape surtax, he has got to assess 50 percent. That is all he has determined.

The statute says something more, in certain circumstances.

Mr. Welch: I know, but here we stand, if Your Honor please: It would be a pleasure to me to walk out of the courtroom feeling that neither the accusation we are a mere holding company or we have unreasonably accumulated had never been made, and, therefore, never had to be met, but it is so suspended in the air, as I say, I am uncomfortable without putting in my evidence.

The Member: Do you object to the witness, Mr. Clark?

Mr. Clark: Yes, sir; I object to him on the ground of lack of qualification.

The Member: I will overrule the objection despite all the qualms I have as the correctness of your view.

Mr. Clark: Will you note an exception, Your Honor?

The Member: Yes.

Direct Examination (Continued).

Q. 87. (By Mr. Welch). Mr. Blough, may I ask you whether or not you have examined the stipulation of facts on file in this case, and the exhibits attached to it? A. Yes, sir; I have.

Q. 88. Have you been present in the courtroom throughout the trial and heard all the evidence that has been introduced? A. Yes, sir; I have.

Q. 89. Have you, at my request, made a study of the financial history of the taxpayer, the Maine Company, as contained in this stipulation and in the evidence with a view to testifying here? A. Yes, sir.

Q. 90. May I ask you, Mr. Blough, when you first undertook to make your study? A. Last October.

Q. 91. Now, as a result of your examination and study of the stipulation and exhibits attached thereto and as the result of your having heard and considered the evidence that has been introduced so far in this trial, have you an opinion, Mr. Blough, as to whether or not the gains or profits of this

taxpayer, the Petitioner, were, in the year 1930, permitted to accumulate beyond the reasonable needs of the business? A. Yes, sir; I have.

Q. 92. What is your opinion as to the year 1930? A. That the gains and profits of the taxpayer were not allowed to accumulate beyond the reasonable needs of the business.

Q. 93. Have you similarly formed an opinion as to the year 1932? A. Yes, sir.

Q. 94. Will you state your opinion as to that year? A. The same as for 1930; that they have not been allowed to accumulate unduly.

Q. 95. And have you similarly formed an opinion as to the year 1933? A. Yes, sir.

Q. 96. And what is your opinion as to that year? A. The same.

Q. 97. Are the reasons, Mr. Blough, which led you to the opinion you have expressed, substantially the same as to each of the three years? A. Yes, sir; they are.

Q. 98. Then, Mr. Blough, would you be good enough to tell us, if you will, the reasons that have led you to the formation and expression of this opinion? A. Well, when I first undertook to study this problem I attempted to study the nature of the business of the Maine Company and I found immediately that it was the top of a group of businesses that were centering around the Chicago Stock Yards at Chicago, Ill.

Those businesses, as shown by the record, constituted the stock yards itself; the steam railway leading into the yards and into the packing area, and into the area immediately surrounding and connecting with all of the railroads running into the city; an elevated passenger railway company serving with passenger service the stock yard area; a bank that serves the stock yard district; an electric generating company that serves the stock yards area with power, electricity,

and a real estate development company; a trust which has as its primary duty, primary aims, apparently, from its history, from testimony, the development of the area in close proximity to the property of the steam railway company for the purpose of increasing tonnage.

These businesses all are tied together and the majority of them at one time were all in the one company, the Transit Company, which is the company that owns the stock yards themselves.

From time to time the separate phases of the business were separately incorporated.

These all head up in the Maine Company and yet there is a unity of enterprise there which runs through the whole thing, centered in the Maine Company.

The principal assets of the Maine Company during 1930 to 1933, inclusive, were the stock of the Jersey Company, an intermediate holding company between the Maine Company and certain of the subsidiary companies—

Mr. Clark: Just a moment, if I may interrupt. This, of course, is simply the conclusion of the witness from his study of facts which he has presented to him; is that correct, Mr. Witness?

The Witness: That is right.

Mr. Clark: Not to be taken as factually accurate.

The Member: The witness is not being offered to testify to any facts, is he?

Mr. Welch: As I thought I indicated, purely an opinion witness now being asked to state the basis for his opinion.

A. (Continuing) In addition to the stock of the Jersey Company, the Maine Company also owned the stock of the Produce Terminal Corporation that owned the power plants. It had some substantial cash and notes and investments, and it also had a contract with the public stockholders of the New Jersey common stock, not held by the Maine Company, by

which it guaranteed 9 percent dividends on the common stock of the New Jersey Company in the hands of the public and received everything over that that the New Jersey Company might earn.

Now, the relationship between the Maine Company and these underlying companies is such that aside from the cash and securities and loans, all of the assets of the Maine Company were dependent for their value upon what was done underneath, in the subsidiary companies.

The companies that might be called, for brevity, the operating companies, although in fact, the two companies, the Railway Company and the Railroad Company did not actually operate but you might save time in referring to them to call them the operating companies, and these companies were the source of practically all of the income of the Maine Company, it getting very little income from these other assets that it held.

The assets of the New Jersey Company were—I meant the stock of the New Jersey Company—was the principal asset of any value to the Maine Company, and, accordingly, it would appear very obvious that the primary duty of the Maine Company would be to see that the operating companies down below that were responsible for feeding the income through to it, were properly maintained and operated so that they might continue to be profitable and increase in their profitableness, and it has seemed to me that the testimony has borne out the assumption that that would be the primary thing that they would be interested in.

When you look at the Maine Company and the operating companies you find that the link between the Maine Company and these sources of income, with the exception of the small amount from the Produce Terminal Corporation and whatever might come up from the bank and the Pau Corporation, the major part of it was tied into the Maine Com-

pany through a connecting link, which was the New Jersey Company, an intermediate holding company.

I say that, just using general colloquial language. I don't attempt to use anything that might have a legal technicality in that description. I am merely saying that it is a company that does, apparently, nothing but hold the securities of these other companies and takes them to the Maine Company.

Accordingly, when you are attempting to determine what the position of the Maine Company is, you must turn immediately and examine the New Jersey Company to see what its condition is and what its situation is. And when you turn to that, the first thing that is notable is that it has a large issue of bonds outstanding, $14,000,000, had at this time, and that those bonds will fall due in 1940. Moreover, you find that the charter of the New Jersey Company is going to expire in 1940. That means that the New Jersey Company is going to meet some kind of a major crisis in 1940. It has $14,000,000 of its own bonds outstanding; it has guaranteed something over $2,300,000 in bonds of the Railroad Company; and it has guaranteed something over about, at the end of 1933, it was exactly two and a quarter million of the Central Manufacturing District bonds, making a total of something over eighteen and a half million dollars that the New Jersey Company was going to have to do something about in 1940. Its own bonds were falling due. The guarantees had to be protected.

Now, knowing that, you immediately look to see—I immediately looked to see what the New Jersey Company might have to take care of that situation, and I found that practically all of its assets except the certificates of beneficial interest in the Central Manufacturing District, and a very small amount of the Transit stock, and a very few other odd items, practically everything that it had of value aside from

those, was pledged on this 14 millions of bonds. The Transit Company's stock was pledged all but a few shares, as I have said.

The stock in the Railway Company was pledged, and two and a half million of bonds of the Indiana Harbor Belt Railroad Company were pledged. Now, it seemed to me, in attempting to put myself back in 1930 to '33, that with this crisis ahead any management that failed to consider that crisis would be unwise. And so I attempted to determine what action should be taken in 1940 and what would happen if the obligations were not met. Obviously, if the bonds were not paid off, the trustee would foreclose on the collateral. In addition to that, the bonds of the Central Manufacturing—I mean, the shares of the Central Manufacturing District would undoubtedly be impounded to take care of the guarantees and any deficiency that might grow out of the collateral on the bond issue. If that would happen the link between the Maine Company and these operating companies would be broken, and the Maine Company would be left with nothing in the way of a business enterprise, having only the cash and marketable securities and loans with the Produce Terminal Corporation stock and the bank, would be entirely out of the stock yards picture so far as its control over it or any income from it or any interest in it was concerned.

Now, that means that the Maine Company must provide for 1940. It would be financial suicide for it not to. Now these obligations, as I have said, were the obligations of the New Jersey Company, and the New Jersey Company had very little to meet it. The question arises immediately as to why the New Jersey Company didn't have funds with which to meet these obligations; why the funds weren't in the New Jersey Company. Well, the evidence indicates that the New Jersey Company was by-passed so far as the income of the operating companies was concerned. It never actually

got hold of any of the dividends from the operating companies after this agreement was entered into between the Maine Company and the stockholders of the New Jersey Company.

Q. 99. In what year, Mr. Blough?

Mr. Clark: I wonder if we might recess for a few moments?

The Member: Yes.

(There was a short recess taken.)

Q. 100. (By Mr. Welch). Would you like to have just the last of what you said read to you? A. Please.

(The record was read as follows:

"Well, the evidence indicates that the New Jersey Company was by-passed so far as the income of the operating companies was concerned. It never actually got hold of any of the dividends from the operating companies after this agreement was entered into between the Maine Company and the stockholders of the New Jersey Company.")

A. (Continuing) That was October 1, 1914. So that the New Jersey Company as it stood in 1930 to 1933, inclusive, had practically nothing it could turn to to obtain any funds with which the company could take care of this obligation which was falling due. All that it could possibly have had was about, well, the end of '33, there was about $200,000 in cash, and they had these railroad bonds of, I think it was, two and a half million. So in order to find out what can be done in 1940 to take care of these obligations, it is necessary to look to some other source than the New Jersey Company.

Now, the policy as shown by the evidence here, figures in the stipulation, has been to push the cash up to the top company. Now, when the parent takes from the children the earnings that they make, when they are in danger of starvation of any kind, it is necessary for them, in turn, to look to the parent, and that is just exactly what the situation is here.

If we are going to find out what its means are of taking care of this obligation, we have got to look to the Maine Company, which is the parent.

When we look there, we find that as of the end of 1933, and while the figures differ from year to year throughout this period, yet they are substantially in the same general nature, and the relationships are very much the same. At the end of 1933, the Maine Company had in cash and notes and marketable securities between 13½ and 14 million dollars, depending on what they might have been able to get out of these marketable securities.

Now, if you add to that the 2½ million dollars of the Indiana Harbor Belt Railroad bonds that were held by the New Jersey Company, and a couple of hundred thousand dollars of cash that the New Jersey Company had, you would still only have about 16½ million dollars, and if you scrape bottom on the cash drawers of all these subsidiaries throughout the whole system, you would only get a little over a million dollars more, which would have left them with, by scraping up every resource that there was in the system, only about 17½ million dollars to take care of this 18½ million dollars in 1940.

But since the New Jersey Company's charter is going to expire in 1940, it seemed desirable to look at the picture of the New Jersey Company and see what ought to be done. Is it just necessary to have money enough to take care of the bonds and the guaranteed obligations, or is there something else that should be done? And it seemed to me that had I been in the position of the management at that time, and it seems to me now, that the wise thing to have planned for and to be planning for is to liquidate the New Jersey Company in 1940. In the first place, it doesn't perform any economic function. It doesn't do anything. It is just a conduit from the lower companies to the top company. In the second

place, it is a taxpayer; it is an extra taxpayer in the chain, and is faced with the problem of meeting personal property taxes in the State of its incorporation.

Further than that, in 1940, for the first time, it will be possible to go out and get all of this preferred stock at par. It is a 6 percent preferred stock, and it has been selling above par most of the time as the evidence shows. Since this company had any money, or since this enterprise had any money that it could have gotten hold of the preferred stock, the preferred has been selling above par. It is not possible to get that at par other than the bare chance that the market might go down below that, and the conditions in '30 to '33 didn't give any indication that that might be the case.

With the possibility of buying up the preferred stock at par, and the fact that this is an intermediate holding company, now it is noticeable that the subs of this New Jersey Company are, with the exception of the Central Manufacturing District, public utilities subject to regulation of a public utility body. The stock yards themselves are subject to the regulation of the Department of Agriculture, and the Interstate Commerce Commission in their charges. The Railway Company, the other large income producer, is subject to the Interstate Commerce Commission. True, that company's properties were under lease to the New York Central, but the Interstate Commerce Commission, as shown in the evidence in this case, indicates that the Interstate Commerce Commission has held its approval of this rental open and reserves the right to open it at any time. Intermediate holding companies—in fact, all holding companies and public utility enterprises—

The Member: What evidence is that that you are talking about?

Mr. Welch: It is in one of the exhibits which has not been

read into the record. It will be shortly called to Your Honor's attention. Mr. Green will give Your Honor the exhibit in a moment.

Mr. Green: Exhibit No. 13.

The Witness: During the period—

The Member: You mean a stipulation exhibit?

Mr. Green: Petitioner's Exhibit No. 13.

A. (Continuing) During this period, '30 to '32, there was a great deal of talk about public utility holding companies. The Federal Trade Commission was investigating holding companies and reports were being made—officials of States and the Federal Government were making considerable over it as a matter of common knowledge. So that that added to these other factors seems to indicate that in 1940 it would be wise to get rid of this intermediate holding company which performs no real function.

Now, suppose you want to get rid of that? What is it going to be necessary for them to do? Well, they are going to have to meet these obligations of better than 18½ million that were previously mentioned—that is, the bonds and the guarantees. On top of that, there was about 6¼ million of preferred stock outstanding, which they would have to pay off or make some other kind of a settlement with by distribution in kind. And there was common stock outstanding which it probably would have taken from three-quarters of a million dollars to buy at that time, because if that company were liquidated, the common stockholders could demand an appraisal of the stock; and unless there was a distribution in kind, and so it would be necessary to take care of them.

I think it would be highly undesirable to consider a distribution in kind because that would mean that the stocks of these operating companies would, to some extent, become in the hands of minority stockholders. Any person who is familiar with holding company operations of a subsidiary

company knows that the minority stockholder problem is a real problem on many occasions when questions of policy are involved. So that it would look as though the thing that they ought to plan on to get a completely sound picture would be the 18½ million of obligations previously mentioned, and the 6¼ million of preferred stock, and approximately a million dollars for the common stock, which would run up somewhere in the neighborhood of twenty-eight to twenty-nine millions altogether.

Now, as I previously indicated, the maximum that there was in the system that they could get hold of to make any payments at the end of 1933 was between seventeen and eighteen million dollars, which still leaves them some ten million dollars to go. Now, it seems to me that a company that has substantial obligations outstanding that must be met, that it cannot be said to have acted unwisely or unnecessarily in the accumulation of funds until it has provided enough to meet those obligations; and when the sound program indicates that they are still short about ten million dollars, at the end of 1933, it seems to me doubly so.

Q. 101. Have you now given us the bases of your opinion, Mr. Blough? A. Well, I have given you the bases of my opinion as they can be supported by the tangible facts and figures in the record. Of course, any person, any business man who is attempting to make a judgment as to a financial policy, has to take into consideration some other things that are not so tangible in their nature, and I tried to give consideration to those as a check on the conclusions that could be drawn from the actual facts and figures, and it seemed to me that those, what I might call intangibles, bear out the conclusions that you arrive at from a study of the figures.

Q. 102. To what do you refer by the term "those intangibles"? A. Well, there are a number of things. In the first place, it must be remembered that from '30 to '33 was a

period of depression in this country, and all business men of foresight, I think, would have been very conservative about distributing or letting go of any resources that they might have during that period of time. The future was pretty much of a blank. There was a great deal of fear about what the future might be, and most companies were conserving their resources during that period. It was impossible at that time to tell how long this depression might last. It was impossible to tell what kind of a market they might have in 1940 in case they attempted to do any kind of refinancing or were forced into any kind of a refinancing instead of paying off their obligations.

And I might say, it is still somewhat doubtful as to what they are likely to face at that time. And there is one thing sure, that in any kind of a financial deal of that kind, money really talks. If you have got the cold cash, you can make deals that you can't begin to consider if you don't have it.

Then it seemed to me it was necessary to consider what the possibilities were of the earning power of this enterprise being interrupted. As I said before, the earnings of the enterprise were derived largely from regulated public utilities. The Central Manufacturing District, which is not a public utility, and about the only one in there that isn't, didn't furnish any income to the enterprise because it never did pay dividends. The Union Stock Yards and Transit Company had rates that were fixed by a public body. During those years there was much talk about the difficulties of the farmer. One of the expenses of the farmer in marketing stock was the expense that this company charged for the services of live stock shipped into the packers.

Considering the general attitude there, it certainly was something to make one pause in considering what the Department of Agriculture might do with the rates there for the benefit of the farmers. You also had quite a bit of agita

tion throughout the country among the electric utility regulatory bodies as to demands for reductions in rates by rate payers, and rates were being cut. There was nothing to indicate that the Produce Terminal Corporation might not have its income reduced in that way. The Interstate Commerce Commission, considering loading charges of the Railway, was in position to make the services performed for the railways unprofitable or much less profitable than they were at this time.

Then, too, there was the question, as the testimony indicates, of the possible competition of the packers, themselves, in building up outlying stockyards, buying directly, and bypassing the stock yards themselves. I think there was a booklet introduced by Respondent which shows the downward trend in the receipts of live stock at the yards. All of that would have an effect on the income, and in looking forward at that time, it was necessary to consider the possibility that that income might be significantly reduced.

Then you have the problem of the New York Central lease. It is true that was a lease that paid $2,000,000, and barring action by the Interstate Commerce Commission, or a receivership, it was good for $2,000,000. But in 1930 to '33, particularly in '32 and '33, the situation of the railroads of the country was, to say the least, precarious, and there was no assurance that this company might not go into the hands of a receiver or even that there might not be Government ownership, in which case it is entirely possible that this lease might have been thrown out.

Now, testimony indicates that these enterprises have devoted a great deal of attention to building up tonnage for this railroad. They had a 99-year lease, or was it a 999-year lease? Anyway, they had a very long-term lease with the Railroad Company. Why be afraid or why find it necessary to spend a lot of money building up tonnage for the Rail-

road Company? Obviously the only reason was that they felt it was necessary to increase the importance of that Railway Company and its tonnage for the purpose of assuring that there would be no cancellation of the lease. If there was no danger of a cancellation of the lease, there was no occasion for building up tonnage, because the lease was fixed. But if the lease became unprofitable, the I. C. C. might step in at any time and decide to cut the rental, or a receivership would let it go.

Now, suppose the lease were given up? It is very doubtful whether the Railway Company, itself, could have made that piece of property as valuable as a railroad company with a long haul attached to it, because that long-haul railroad company is in position to feed through this little railway substantial revenues to the long haul. So if it isn't worth $2,000,000 to a railroad company so that it might give it up, it certainly wouldn't be worth anywhere near that to the little railroad itself operating on its own hook. In addition to that, it would be necessary for the steam railroad—that is the company we call the Railway Company—to get some capital with which to equip itself to handle the railroad in case the New York Central gave it up.

Now, if you follow—if you assume that the trend of earnings is going to continue and the trend of accumulations is going to continue on beyond 1933 and 1940 at the same rate that it accumulated from, say, the middle of the '20's up to 1933, they still would not have amounted to more than enough at least to take care of the situation in 1940 in its complete program.

Now, if in addition to that you have to discount the possibility of earnings from this period on to the date when they are meeting their crisis, they are still less likely to be available at that time, and a further necessity of it maintaining a substantial amount of cash in the enterprise.

Q. 103. Mr. Blough, did you give consideration to the dividends paid by the Maine Company in the study that you made of it? *A.* Yes, sir.

Q. 104. Did you form an opinion as to whether or not the dividends paid by the Maine Company in the years 1930 to '33, inclusive, were reasonable dividends under the circumstances? *A.* Well, to decide whether a dividend is a reasonable dividend or not, it is necessary to take into consideration, first the rights of security holders to a distribution of profits, and, second, the needs of the business. I have already covered the needs of the business to indicate that it seemed to me that there was very good reason for maintaining the funds in the business.

Now turning to the needs of the security holders, in this particular case there was only one and whether he got sufficient or more than sufficient for his livelihood was a question that he was in a position to answer in this case.

The Member: What corporation are you talking about?

The Witness: The Maine Company, Your Honor; the only money they really had to declare outside as dividends except, of course, the regular dividends to the public on the New Jersey shares preferred and what common was outstanding. *A.* (Continuing) Now, to look at this dividend policy from the standpoint of a general corporate dividend policy, I tried to look at it from the standpoint of what you would have looked at it if you had been a public holder; I mean a group of public stockholders rather than just one; and in looking at the dividend policy we find that all during this period a 5 percent dividend was regularly paid to the stockholders, and it seems to me that even had there been a large number of public holders, that amount of regular dividends, year in and year out, could not have been considered unfair to them in that it did give them a regular return on their investment, which is the thing they buy for and what

they depend on and when you couple those two things with the needs of the business it seemed to me that the dividends were not exorbitant.

The Member: Not exorbitant?

The Witness: Well, let me say that it seemed to me that the dividends were reasonable.

No, "exorbitant" was not the word; that the dividends were not unduly low, I should have said; the amount retained out of the earnings was not exorbitant, was what I should have said.

The Member: May I interrupt?

Mr. Welch: Certainly, Your Honor.

The Member: Can you make your statement in respect of the distribution of dividends in the light of the fact that the shares were not held, as you assume, by what you call the general public or a group of shareholders, but were, in fact, held by one person? How does that affect your reasoning, or what is the reasoning to be applied to that situation that existed rather than to the hypothesis that you assumed?

The Witness: Yes; I see your point, Your Honor.

I think the fact that the stock was all held by a single stockholder places the determination of the reasonableness of the dividend to a much greater extent on the basis of the needs of the business rather than the needs of the security holder, so that the needs of the business would be the primary thing to take into consideration, here.

I was trying to—

The Member: Suppose you elucidate that. It is not at all clear to me, as to what you mean.

The Witness: Where you have a group with demands for funds in the business, and also a responsibility for a distribution to security holders, the problem of the reasonableness of the dividend, it seems to me, is one of a somewhat fine balance between those two needs.

The Member: Now take your factor which you have stated of the responsibility for a distribution to the shareholders. What do you mean by that?

The Witness: I conceive of a responsibility for distribution to the shareholders to apply primarily to a corporation where there is a holding of the securities outside of the management.

The Member: This was not such a corporation.

The Member: Then you eliminate that imaginary situation and take the situation as it is and tell me what you mean by the responsibility of the corporation to the shareholder when the shareholder is one?

The Witness: Since the shareholder is one, and there is no public interest to consider, then it seems to me that the balance between the shareholder and needs of the business is very much displaced, and that about the only thing that needs to be taken into consideration is the needs of the business because the individual security holder who is part of the management is in a position to see that he gets enough to live on and in deciding whether he has used wisdom or not in the distribution of the funds of the corporation you are forced to look almost exclusively at the needs of the business.

The Member: So that there is no such thing in this particular case as the factor of responsibility for distribution?

The Witness: A reasonable dividend; yes, sir.

The Member: There is no such factor, is there; that everything you have said about that we can completely ignore, can't we; everything you have said as to the ordinary factor, where you have a group of shareholders doesn't apply to this case, and, therefore, there isn't any such factor to be considered?

The Witness: Well, it doesn't apply, but I felt it was necessary to show why it doesn't apply here by indicating

what your general measure of the reasonableness of the dividend may be.

A. (Continuing) There are a very few others of these somewhat intangible factors that I wanted to mention, and that is the possible needs for other funds for such things in the industry other than those that are tied in with this 1940 situation.

As the record shows, the history of this enterprise is replete with situations where it was necessary to have additional money: The packers in 1890; the packers again in 1907; the necessity of coming into the Armour picture during this period under consideration; the necessity for furnishing the Central Manufacturing District during this 3 years, or during the period—yes, these three years—was about $1,600,000; the fact that, as the testimony shows, the management of these operating companies was making demands on the top company for additional funds, Mr. Leonard urging funds for concrete hog houses; Mr. Hackett estimating $1,000,000 to $5,000,000 that would have to be furnished for the development of the Central Manufacturing District, and so on, all must be taken into consideration in figuring what you are going to have in 1940. You can't tell what might lie ahead.

For example, in 1927 and 1928 no sane person would have ever thought of this enterprise having to pour $10,000,000 into a bank in the stock yards area to save it, yet there was something that had hit them suddenly and those unpredictable circumstances are things every business man has to provide for and anticipate, to some degree.

Q. 105. (By Mr. Welch). Mr. Blough, you have been talking about the dividend of the Maine Company and I would like to have you point out for us, if you will, whether or not that dividend to the stockholder or stockholders of the Maine Company is the only dividend that leaves the whole enter-

prise? A. No; in addition to the dividend that goes to the stockholders of the Maine Company, you also have the dividends going to the preferred stockholders of the New Jersey Company, and those shares are held almost in their entirety, during this period, by the public, and also the dividends of 9 percent on the common stock that was held by the public. I think that totals, each year during this period, somewhere in the neighborhood of $400,000 to $450,000.

Q. 106. Now, Mr. Blough, there is just one other thing I want to mention to you: You testified that the Maine Company has withdrawn steadily from the subsidiaries their earnings, or something to that effect, did you not, sir? A. That is right.

Q. 107. Have you had prepared, or prepared under your direction, a chart that shows the withdrawals of the earnings of the subsidiaries by the top company? A. Yes, sir.

Q. 108. Is this that chart, Mr. Blough (indicating a chart)? A. It is.

Mr. Welch: This I shall want to offer as a chart of what he will now testify to, and I should like to offer it. It is just a chart showing the withdrawals.

(The chart so offered and received in evidence was marked "Petitioner's Exhibit 40," and made a part of this record.)

Mr. Welch: Mr. Clark, I am handing His Honor a smaller chart.

Mr. Clark: Yes.

The Member: Is this a replica in miniature of that, Mr. Welch?

Mr. Welch: It is, if Your Honor please.

The Member (Referring to document in his hand): Wouldn't this be a better exhibit than that?

Mr. Welch: We have some large exhibits already in evidence, and I would be pleased to have the larger go along.

I will put in two or three of the littler ones, if you would like me to.

The Member: I was just thinking of the file. We can fold this one up and put it in the file, and when you come to take an appeal you have an easy thing to put in your transcript of record on appeal.

What are you going to do with that (indicating the large chart)?

Mr. Welch: If Your Honor please, the map, for example, I think may be of help to other members of the Board than yourself, and it is large and if—

The Member: We could fold that but these backed things would be difficult to handle.

However, we have got to put up with whatever you think is a proper exhibit in your case.

Mr. Welch: If the unhappy situation comes that I take up the case to a higher court, I could try to adjust with counsel whether we take up the framed exhibits or something else.

Q. 109. (By Mr. Welch). Calling your attention to this chart, will you explain to use what it shows? *A.* The solid black line on the chart shows the net earnings of the New Jersey Company, its wholly-owned subsidiaries and their wholly-owned subsidiaries and wholly-owned subsidiaries of the Maine Company.

The line with the dots in it represents the distributions by the above-mentioned companies to the Maine Company and to other preferred and common stockholders of the New Jersey Company.

This chart was prepared from figures that are contained in the stipulation.

Q. 110. And is there anything you would like to point out to us that— *A.* It might be noticed that in 1932, the solid black line makes a peak upwards. It should be remembered, in studying the chart, that in that year there was included in

the earnings the $2,426,433.29 of impounded re-weighing charges of the Transit Company for 1921 to 1931, inclusive, which were released in 1932 and were treated as income on the books in that year.

Q. 111. Have you anything to say to us, Mr. Blough, about the general path of the lines from 1922 on to the end of the chart? *A.* Well, it will be noticed in studying the chart that from 1922 to the close of 1933 the distributions and the earnings are not very close together, and, as a matter of fact, the figures back of the chart reveal that from 1921 to 1933, inclusive, the distributions as shown in the dotted line exceed the earnings as shown in the black line.

Mr. Welch: You may inquire, Mr. Clark.

The Member: Weren't these figures that we had on the first day, which included this $2,400,000 of impounded funds, didn't they go down into the red figures in 1933?

Mr. Welch: Yes.

The Member: Now this exhibit shows in 1933 only an approximate zero. As I remembered it, the figure was a million dollars below zero, isn't that right?

Mr. Green: That was the figure of the Transit Company alone.

During that year other companies earned money, so that it came up closer to zero.

The Member: The figures we were considering on that day were the figures of the Transit Company?

Mr. Green: The figures of the Transit Company alone.

The Member: And this is the figure of the New Jersey Company?

Mr. Green: The figure of the New Jersey Company and all of the other companies.

The Member: This is the New Jersey, isn't it?

Mr. Green: It is the figures of the New Jersey and all of its wholly-owned subsidiaries which include the Transit.

Company, the Railroad, the Railway, and the District, and also income from the Produce Terminal; in fact, the figures of the whole enterprise except earnings of the Maine Company from sources other than the enterprise.

The Member: So that the figures of the group shown by this black line—this chart is different from what it would be than if you made a chart of the Transit Company?

Mr. Green: Yes.

The Member: And that deficit of the Transit Company, then, was absorbed by the earnings of other companies; is that right?

Mr. Green: That is correct.

Mr. Clark: May I have just a moment, Your Honor?

The Member: Yes.

Let me ask another question: I suppose it is in the stipulation, and that is probably the reason it is not in my mind at the moment, and that is: What has the evidence shown as to the actual amount of accumulated and undistributed earnings of the Maine Company during the taxable years? Does that appear?

Mr. Green: Those figures are in the stipulation.

The Member: Would you give me an idea as to what they were? I don't ask you to make a definite statement.

Mr. Green: The Maine Company's income, if you treat it—I take it you mean the Maine Company's income?

The Member: I am talking about only this Petition.

Mr. Green: Yes.

The Member: What was the accumulated earnings, in what percent, to indicate the application of 104, because they weren't distributed?

Mr. Green: That appears in S-51 attached to the stipulation. It shows that the Maine Company's accumulations in 1930 were about 2½ million; in 1932, about $1,700,000; in 1933, about $1,800,000. Now, of course, the Maine Com-

pany's earnings in that year would be greater than the earnings of the system—in the year 1933, for example, would be greater than the system because they withdrew money in the form of dividends that weren't earned by the rest of the system in that year.

The Member: These accumulated earnings are over and above the distributed 5 percent; is that right?

Mr. Green: That is right.

The Member: Would you rather suspend now until 2 o'clock than you would to go on for 5 minutes?

Mr. Clark: I believe that would be helpful, Your Honor.

The Member: Suppose we do that.

Instead of coming back at quarter after two we will come back at 2 o'clock.

We will adjourn now until 2 o'clock.

(Whereupon, at 12:40 o'clock p. m., a recess was taken until 2 o'clock p. m. of the same day.)

Afternoon Session.

The Division resumed hearings at 2 o'clock p. m., whereupon the following proceedings were had:

Mr. Clark: May I ask your indulgence for a moment, Your Honor?

The Member: Yes.

Mr. Welch: Could I have the witness one moment, Mr. Clark?

Mr. Clark: Well, there is only one question that I had in mind. I am not sure whether something which is marked on my copy as Petitioner's Exhibit 41 was offered in evidence.

Mr. Welch: Apparently that is 40 you are referring to, this large chart.

Mr. Clark: Forty?

Mr. Welch: Yes.

Mr. Clark: Was it offered in evidence?

Mr. Welch: It was. It was marked.

The Member: Is that true, Mr. Clark? It has been marked?

The Clerk: It has been marked "Exhibit 40."

Mr. Clark: I would like to know what the record says relative to that.

The Member: I can't recall the formulation of an offer. I confess that there was a lot of talk about whether that sheet should be the one which goes in evidence, or this one, apparently upon the assumption of everybody that we were talking about something that was going in evidence.

Are you talking about an opportunity to simply object; is that the idea?

Mr. Clark: I would like to object, yes, Your Honor.

The Member: Well, I think that there wasn't such an offer as would have given an opportunity to object, as I recall it.

Do you remember, Mr. Welch?

Mr. Welch: I never trust my memory. My impression was that I offered it and that Your Honor then began to talk about the size of it, but that is pure impression. I am distinctly of that impression, but I am not sure.

The Member: Well, I will hear the objection, if there is one, or a motion to strike, if that is what it is. All I am concerned with are the reasons to see whether it should be excluded.

Mr. Clark: Your Honor, my objection is this: That there is no supporting data for this chart. I had never seen it before. Nothing was offered in support of it, and, consequently, I object to the chart.

Mr. Welch: I will ask Mr. Green to answer the objection, if he will.

The Member: What is the supporting data, Mr. Green?

Mr. Green: Every figure in that chart appears in the

stipulation of facts and exhibits attached thereto filed in this case. I have with me an analysis, item by item—

The Member: Well, perhaps it should be left to the witness to say upon what basis this chart was prepared.

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having heretofore been first duly sworn was recalled to the stand, and was examined and testified as follows:

The Member: You prepared it, did you not?

The Witness: It was prepared under my direction.

The Member: Yes.

Well, now, you say in your own way where you got the data that is shown by this chart?

The Witness: All of the data of this chart was taken from the information in the stipulation, or, rather, in the exhibits that were a part of the stipulation numbered "S" with some number, and they were combined and added together as indicated in my statement of what they represented to produce the totals which are represented in the chart. They can be reconstructed entirely from information in it.

Mr. Clark: Well, that is what I will have to go through this afternoon, Your Honor. I am sorry.

Mr. Welch: It is quite all right.

Now, could I ask him one more question before you take him for cross, sir?

Mr. Clark: Yes.

Direct Examination (Continued).

Q. 112. (By Mr. Welch). Mr. Blough, is there some correction in your testimony of this morning that you would like to make? *A.* Yes, I would.

Q. 113. What is that correction, sir? *A.* I think I stated at one place in my testimony this morning, that the New Jersey preferred stock was selling above par throughout this period, and the fact of the matter was, according to the

record, that the New Jersey preferred stock was selling below par during certain years, particularly '32 and '33 of the period under consideration.

Q. 114. Does this correction in your testimony in any way affect the ultimate opinion that you have expressed? A. No, sir. It was merely an incident in that testimony.

Cross-Examination.

X-Q. 115. (By Mr. Clark). Referring to this chart which has been marked, I believe, as Petitioner's Exhibit 40, do you have a copy of that before you? A. Just a moment, please.

(The witness searches for document.)

A. Yes, sir.

X-Q. 116. Now, was this made up under your direction? A. It was—yes, sir; it was prepared under my direction.

X-Q. 117. And from what sources? A. From sources that are in the stipulation.

X-Q. 118. And will you refer relative to 1911 as to what sources in the stipulation you refer to? A. For the year 1911 there is included first a figure with respect to the Transit Company; the net income per S-5 of the stipulation less dividends from Harness & Saddlery per S-5 of the stipulation, and I might say, for the benefit of this whole line of questioning, that what I say here will apply to every year that is shown on the chart.

The next item related to the Harness & Saddlery net income per S-5 of the stipulation—

X-Q. 119. Well, now, just a moment. I would like to have you identify these items, if you will.

(Documents were handed to the witness by Mr. Green.)

A. All right.

X-Q. 120. I would like to have you start with 1911 on this chart, when this chart starts. A. Very well.

1911—the sheet, or, rather, Petitioner's Exhibit No. 40, the black line where the net earnings are graphed is graphed at a point which represents $1,868,718.09.

X-Q. 121. Yes, but on what basis was that graph charted? *A.* On the basis that one of these spaces on the graph represents a million dollars.

X-Q. 122. I don't understand that. May you explain? *A.* Well, in graphing the line on the chart, if there should be a million dollars of net income, the graph would come on the line, the horizontal line marked "$1,000,000." If there should be $2,000,000 of net income at that time the line would be on the horizontal line marked "2,000,000," and so forth, so that this—

X-Q. 123. Now, may I interrupt? Did you refer to the stipulation of facts in regard to that? *A.* Surely. I was just about to give the figures from the stipulation.

X-Q. 124. All right. *A.* The actual putting it on the graph is a matter of measurement with a ruler to get the relative proportions of a million dollars per line.

Now, in arriving at that $1,868,718.09, which represents the beginning of this black line in 1911, it was made up of $2,192,513.53, the net income of the Transit Company, minus $4,333.57—pardon me; that is not right—minus $4,000, the dividends received by the Transit Company from the Harness & Saddlery Company as set forth in Exhibit S-3.

X-Q. 125. Now, that's for what year? *A.* 1911.

X-Q. 126. Now, will you turn to 1912—

The Member: Just a moment. What is your figure?

The Witness: That is just one of the figures that go to make up the million, eight hundred plus. I wanted to give the rest of them, now.

A. (Continuing) The net of those two figures, $2,188,513.53, the net income of the Transit Company, aside from the dividends from the Harness & Saddlery Company.

The next item which is in that total is $4,333.57, the net income of the Harness & Saddlery Company, according to Exhibit S-5.

The next figure is $280,980.20, the net income of the Railway Company, taken from S-8.

The next figure is the net loss per books of the Chicago Junction Railroad Company of $50,000 from S-12.

Then there is a figure, a red figure, deficit figure, of $601,980.09, which is the net income of the New Jersey Company, according to S-26, less—

Mr. Welch: If Your Honor please (addressing the witness) would you like to have Mr. Green's assistance in hunting those out for you, Mr. Blough?

The Witness: It might make it a little faster.

Mr. Welch: Would you mind, Mr. Green? It is slightly inconvenient for the witness to do it as he testifies.

That is, if it is agreeable to Your Honor?

The Member: Oh, yes.

A. (Continuing) That was a net income of $1,233,231.91 less the amount included in that income as constructively received from the subsidiary companies in the amount of $1,835,212, both figures shown in S-26, the net amount of which is a negative figure of $601,980.09.

The last item that goes to make up the total I gave is the net income of the Central Manufacturing District as set forth in S-34, in the amount of $46,870.88.

Now, in each of the years the figures that represent the totals graphed on that chart of net income are taken from those same columns in those same exhibits. All you need to do is run down the column and take the figure which is just below.

X-Q. 127. (By Mr. Clark). No. What I want to know is what you have done. A. Well, that is what I did. I took the figures from the exhibits.

X-Q. 128. From what exhibits? A. The exhibits I have been reading from, the Exhibits S-3, S-5, S-8, S-12, S-26, and S-34. And, later on, in the year 1916, when income from the Produce Terminal comes in, from S-14. Now, if you wish, I can go through with every year as I have gone through 1911.

X-Q. 129. Well, just a moment.

Mr. Witness, have you taken into consideration the adjustments that were made relative to 1930 to 1933? A. No, sir; I took the book income as shown by these exhibits that I have mentioned.

X-Q. 130. Do you have your computations available? A. Yes, sir; I have.

X-Q. 131. Do you have anything to which we might have access? A. I see no reason why a copy of this might not be in their possession to check.

Mr. Green: It is up to Mr. Welch. I don't know where he is.

Mr. Welch: I am right here, sir.

I see no reason why the Government should not have it. I think it is only fair that they should have it.

(A paper writing was handed to Mr. Clark.)

Mr. Welch: I take it, if it is supplied to you, that is sufficient without putting it in evidence, or would you rather it were in evidence?

Mr. Clark: Oh, well, I would just like an opportunity, Mr. Welch, to check it.

Mr. Welch: It can either be in evidence, or not, as you choose.

The Member: Tell me, Mr. Witness, I would judge from the perpendicular line at which the chart begins, marked "1911" that I would have thought that that meant the beginning of the year 1911, and that the space between the figure "1911" and "191" [*sic*] represented the period of a year.

The Witness: As a matter of fact, these spaces represent the distance between December 31 of each year, December 31, 1911, as the first balance sheet that is in the stipulation.

The Member: Now, am I to take the first perpendicular line, then, as being the date of December 31, 1911?

The Witness: Pardon me. I am sorry. I think I misspoke. I mean the line, perpendicular line numbered "1911" represents the income of the year 1911, and the space between 1911 and 1912 actually represents nothing. It is only the trend, the next place of any significance being the next perpendicular line which represents, then, the net income for the year 1912.

The Member: Well, then, the distance between these perpendicular lines is wholly immaterial?

The Witness: No significance. The distance between the horizontal lines is significant in that they represent millions.

The Member: Is it possible to attribute any significance at all to those distances between the perpendicular lines by reason of the fact that if you separated them further the curve would naturally be flatter?

The Witness: That is true.

The Member: And if you condensed them more the curve would be more pronounced.

The Witness: That is true, Your Honor.

The Member: That doesn't make any difference, however, for the purpose of the chart, does it?

The Witness: I didn't think so. It was merely set up for the purpose of giving what seemed to be a balanced chart.

The Member: What guided you in selecting these spaces? Anything?

The Witness: No, nothing at all, simply what seemed to

be about the right distance to make that chart but would be readily read in the court room.

The Member: No, but what is the right distance?

The Witness: Well, I don't know.

The Member: These charts are tricky things. I have made them myself. If you put the two ends of them close together, it looks as though you are in the Alps, and if you put the two ends of them far apart, it looks as though you were almost on a plain, and the visual effect is quite different. Now, I don't want to be fooled by the size and shape of this chart. If there is anything significant at all in it, I want to know what it is, frankly.

The Witness: Well, I am afraid that I will just simply have to say there was no real significance in the spacing of the lines on the chart.

The Member: Go ahead, Mr. Clark.

X-Q. 132. (By Mr. Clark). Have you given any consideration as to what this chart has to do with the dividend policy of the Maine Company? A. This chart was not prepared for the purpose of reflecting anything about the dividend policy—

X-Q. 133. Please answer the question. A. May I have the question? I am sorry.

(Question read.)

A. Yes, to this extent.

X-Q. 134. All right. Then to what extent? A. To the extent that this shows the way in which the earnings of the subsidiaries were pushed up to the Maine Company.

X-Q. 135. Well, now, will you explain that further? A. This chart, as you will see, indicates that the earnings from 1922 on of all of these subsidiary companies were paid out as dividends either to the outside security holders or up to the Maine Company. This does not show the dividends paid by the Maine Company, but it does show that the funds

were pushed up either to outside stockholders or to the Maine Company, and, therefore, it clearly reflects the fact that the Maine Company was getting during these years—it doesn't give any indication of how it was disposed, but it indicates that it was getting all of the earnings of the enterprise, and the fact that the Maine Company was getting all of the earnings of the enterprise has some significance on the desirability of the Maine Company distributing dividends.

X-Q. 136. You have referred to certain companies as subsidiaries of the Maine Company. What do you mean by that? *A.* Well, when I was talking about the subsidiaries of the Maine Company, I should have probably used the word "sub-subsidiaries" and "subsidiaries." What I mean is the companies that the Maine Company owns the controlling interest in, or the companies that those companies, in turn, own the controlling interest in. It is those companies that lie below the Maine Company and which the Maine Company by its ownership of capital stock is able to control.

X-Q. 137. In what category would you place the New Jersey Company? *A.* That is a direct subsidiary, and the subsidiaries of the New Jersey Company are the Railway Company and the Transit Company and the Railroad Company, and those I would call sub-subsidiaries of the Maine Company.

X-Q. 138. Under the control of the Maine Company? *A.* That is right.

X-Q. 139. Do you know whether or not the Maine Company owns voting control of the New Jersey Company? *A.* In the years in question the Maine Company did not own the full voting control.

X-Q. 140. Those are the years '30 to '33? *A.* That is right, because the voting power in the New Jersey stock

rests both in the preferred and in the common, and the Maine Company did not have enough so that if some other party had held all of the shares that the Maine Company did not have, it could have controlled. Under those circumstances the Maine Company could not have controlled, but it had such a large block in proportion to anyone else, the other securities being scattered far and wide, that it had control.

X-Q. 141. Can you tell from your research how much money the New Jersey Company reasonably expected to earn as between 1934 and 1940?

Mr. Clark: Just a moment. This is cross-examination.

The Member: Have you finished the question?

Mr. Clark: No.

Mr. Welch: Well, I think I should sit down.

X-Q. 142. (By Mr. Clark). (Continuing) Sufficient to retire its obligations by 1940?

Mr. Welch: Could I hear the question?

(Last question read.)

Mr. Clark: The question isn't happily framed, Your Honor.

X-Q. 143. (By Mr. Clark). —as to whether such earnings would be sufficient to retire its obligations by 1940. A. I did not make any study of the actual figures, but I took the trend of earnings during the period from 1920 on through the period 1930 to 1933 and estimated that a continuance of that trend would just about take care of the requirements in 1940 on the basis of the dividend rates in effect, assuming that there would be no unusual requirements for cash. I don't think those came out quite to the point of covering all of the requirements for a reorganization—I mean, a complete elimination of the New Jersey Company.

Mr. Welch: Could I say just a word?

The question, if I understood you, Mr. Clark, was put as to the Jersey Company, although it was put in two installations, and I am under the impression the witness has answered as if it were put as applying to the Maine Company.

Mr. Clark: Why don't you take care of that, Mr. Welch, on redirect?

Mr. Welch: Because it was an obvious error. You split your question and I was not sure myself whether you asked about Maine or New Jersey.

Mr. Clark: I asked about New Jersey, definitely. Ask the Reporter.

The Witness: I am sorry, Mr. Clark. I think that your statement is correct that that is what you asked, but I am frank to admit that in my answer I was covering the whole enterprise and I did not make any study of the individual situation of the New Jersey Company; the New Jersey Company itself was not in a position to accumulate anything during that period due to this by-pass contract which had been entered into back in 1914.

X-Q. 144. (By Mr. Clark). When you say "the by-pass contract," what do you mean? *A.* That is the contract that provided that these subsidiaries of the New Jersey Company should pay, as I remember the contract—it is in evidence—but as I remembered, it provides for paying to the trustees of the New Jersey bond issue the amounts necessary to pay the bond interest and, I think, it provides for the payment to a trustee of amounts necessary to pay the dividends on the preferred stock and the 9 percent dividends on the outstanding common stock, and that the rest of it shall be all paid to the Maine Company, and that the New Jersey Company should not get any of it.

X-Q. 145. When you say "these subsidiaries," to which companies do you refer? *A.* Those contracts related to

the Transit Company and the Railway Company, the Steam Railway Company.

X-Q. 146. Have you given any consideration to the relationship of a corporation named F. H. Prince & Company, Inc., or incorporated? *A.* I have paid very little attention to the company F. H. Prince, Inc. I have noted it and know its place in the picture.

X-Q. 147. Well, will you tell me what your opinion is of its place in the picture? *A.* Well, it has a peculiar place in that it has been created for the purpose of holding, as I understand it, 60 percent of the stock of the Maine Company, and, in turn, of having its shares held by a trust that was set up by Mr. Prince, of which Mr. and Mrs. Prince are at present, as I understand it, the trustees.

I am not informed as to the purpose and I don't see, immediately, any particular function of F. H. Prince & Company, Inc., except that it is just to hold those shares.

X-Q. 148. That is, in your opinion, it exercises no business function whatsoever—

Mr. Welch: Just a moment.

Mr. Clark: I am asking for the opinion of the witness.

Mr. Welch: On what? He was put on to testify as to the reasonableness or unreasonableness of the accumulations in the Maine Company and I so stated when I offered him. I did not ask any opinion of this witness of F. H. Prince & Company Inc., nor was that company mentioned by him.

Mr. Clark: It is in the stipulation of facts, Your Honor.

Mr. Welch: That is not the question. The question is, Are you examining on anything as to which he expressed an opinion, and I think you are not.

Mr. Clark: I ask a ruling.

The Member: I will overrule the objection.

A. Well, the only thing that I know that bears on the

business activities of Frederick H. Prince, Inc., is the provision in the trust indenture setting up a trust estate by Mr. Prince along in about 1932 which provides that certain beneficiaries of the trust are to participate in the work or the management of F. H. Prince & Company, Inc., and since F. H. Prince & Company, Inc., holds 60 percent of the stock of the Maine Company, I would assume that in time F. H. Prince & Company, Inc., might come to have a place of control-management over the Maine Company, but that is purely an assumption and I can guess it only from the document which is in evidence and which shows the trust indenture. I have no knowledge aside from that as to what its intention is.

X-Q. 149. (By Mr. Clark). You say that company, according to your recollection, was organized in 1932? *A.* I don't remember.

X-Q. 150. I see. *A.* I said the trust was set up in 1932. I don't remember whether the corporation was organized then or not.

X-Q. 151. Can you tell me, whenever it was set up, from your examination, it has any responsibility for the conduct of the affairs of what we call the Jersey Company?

Mr. Welch: Just a moment. That seems to me a legal conclusion: "Has it any responsibility as to the conduct of the affairs of the Jersey Company."

The Member: I don't think you can make those subtle distinctions now with this witness. *A.* Well, as I see it, its only relationship with the New Jersey Company is through any control that it exercises over the Maine Company which in turn, as I said a while ago, has effective working control over the Jersey Company. I should like to have it understood, however, Your Honor, that—

X-Q. 152. (By Mr. Clark). Now, just a moment: I haven't asked you a question.

The Member: He hasn't finished his answer, apparently.

Mr. Clark: I thought he had.

The Member: He said, "However," so I presume that relates back to what he has already said.

A. (Continuing) I should like, Your Honor, to emphasize again that the only thing I know about Frederick H. Prince, Inc., is what I read in the stipulation.

The Member: You don't want me to assume from that, do you, that the testimony that you have given relating to other than Frederick H. Prince & Company, Inc., goes into facts other than those in the stipulation, do you?

The Witness: My testimony was based entirely on the facts in the stipulation, but I did make substantial inquiries from officers of the corporations and I did make visits to these properties and read the minutes of the corporations and so forth to completely familiarize myself with what was back of this thing, but the basis of my testimony on which I expressed my testimony this morning, wherever it was based on factual material, is entirely in the stipulation, but what I wanted to emphasize here was that with regard to Frederick H. Prince, Inc., I made no inquiries because it seemed to me to be entirely outside the scope of my problem.

X-Q. 153. (By Mr. Clark): And why was that so? A. Was because it—as I understood it, the problem that was involved here was whether or not the Maine Company had failed to distribute the—or had retained its earnings and profits beyond the needs of the business and it didn't seem to me that once having gotten to that point where I analyzed the situation of the Maine Company and found out what its needs were and what its earnings were and what its dividends were and what its problems were, that it was of any significance to know where the money went, once it had left the Maine Company.

X Q. 154. Now, let me ask you this and then I will clear up this situation, I think, in a moment:

Is it your opinion that the F. H. Prince & Company, Inc., did any business whatsoever?

Mr. Welch: That is purely a factual matter.

Mr. Clark: I am asking it as a factual matter.

Mr. Welch: This witness didn't run F. H. Prince & Company, Inc. This witness is an expert. You will get very little help from such a question.

Mr. Clark: Please leave that to me.

Mr. Welch: We object to that question.

The Member: The objection is overruled.

A. I don't know. As I stated before, what I know with regard to this company is in the stipulation.

X Q. 155. (By Mr. Clark). And your opinion as to what we call the Jersey Company is that it conducted no business whatsoever? A. That depends on your definition of what business is.

X Q. 156. I am just asking you what your opinion is. A. The New Jersey Company did conduct business.

X Q. 157. And what business? A. The business that it conducted was pretty largely the meeting of the board of directors to carry out the instructions of the Maine Company and the casting of its vote in the stockholders' meetings of the companies in which it owned stock.

X Q. 158. Any other business so far as you know, from your examination? A. So far as I know, I don't remember any other business.

X Q. 159. Didn't you say this morning that the New Jersey Company was nothing but a shell, a conduit, or something to that effect? A. I believe I did.

X Q. 160. Let me ask you, Mr. Blough, if you consider it a sound policy for a company to hold in a bank large cash balances which were earning nominal interest while bonds

were outstanding and preferred stock is outstanding on which interest and dividend rates vary from four to six percent, and that the bonds could be purchased below par; now, if the question isn't clear, the Reporter will read it to you.—A. I think I grasp the question.

The answer to that question cannot be just a bare "yes" or "no."

Things have to be taken into consideration such as the likelihood or the danger of having to have substantial amounts of cash, which a purchase of your bonds would take away from you and not leave you the freedom to meet any emergencies.

Also, the effect of the action of acquiring your securities on the market in those securities and the possible effect on—being specific to this case—the common stock by an action in purchasing bonds, would have to be taken into consideration. That is, if the acquisition of your bonds and going into the market was—as Mr. Prince testified—going to push up the price of the common, and that wouldn't at all be unlikely. That is a perfectly reasonable financial conclusion to arrive at.

Then it is entirely possible that a sound financial practice would say, "Stay away from the bonds."

However, I do think that it would not have been an unreasonable financial policy for this enterprise to have followed to have acquired some of the bonds that they—if they could have picked them up at a reasonable price—that, however, is an alternative possibility that is extremely difficult to determine, just what the balance was in the light of the conditions existing at the time you were faced with the problem.

Q. 161. Let me ask you this, Mr. Blough: Have you made any inquiry as to whether these bonds could be obtained in the market, or not?—A. Yes, I have.

X-Q. 162. And what is the result of your inquiry? A. Well, the answer that I have obtained in talking, not only to representatives of the company but to an investment banker, is that these bonds are held very closely, and that it is not possible to get any substantial number of them and has not been, for years.

X-Q. 163. Do you know anything about how many sales of those bonds were made during the years in question, and prior thereto? A. No, I don't.

X-Q. 164. You haven't inquired from— A. Yes, I have inquired, but I haven't obtained any information.

X-Q. 165. From whom did you inquire? A. I inquired from the representatives of the company.

X-Q. 166. You have never looked at Moody's or Poor's Manual, have you? A. I certainly have, but I don't think I looked—

X-Q. 167. Have you found anything relative thereto? A. I didn't look this particular point up in Poor's or Moody's.

X-Q. 168. Do you know anything about over-the-counter sales? A. Surely. Of these securities?

X-Q. 169. Yes. A. No.

X-Q. 170. Have you made any inquiry relative thereto? A. Not outside of the officers of the company.

X-Q. 171. Do you know the publication known as "National Bond Summary"? A. Yes, sir; I know of it.

X-Q. 172. What is it? A. I don't know that I can give it any technical definition.

X-Q. 173. I would like to know what your own idea is? A. It is a publication which gives information regarding bonds, and, as I remember it, their prices and quotations at various times.

X-Q. 174. Well, on the market? A. No; I think it is a sort of bankers' journal.

X-Q. 175. Well, doesn't it deal with over-the-counter

transactions, as we know them? A. Yes, that is what I meant, sort of a banking journal to give information about these non-listed securities.

X-Q. 176. What is your idea of over-the-counter transactions? A. Any transaction which is carried on by banking houses or investment security dealers, persons of that kind, when the securities are not dealt in on an organized securities exchange, and sometimes there are over-the-counter markets for securities that actually have listing and registration on a national securities exchange or an organized exchange.

X-Q. 177. Did you hear the testimony of Mr. Prince yesterday? A. Yes, sir.

X-Q. 178. Do you recall whether or not he testified that he could have made another lease to another railway company had there been any abrogation of the New York Central lease? A. Yes, sir; I heard him make such a statement.

X-Q. 179. Did you consider that relative to the evidence that you have given today? A. Yes, sir; I did. I understood him to be—

X-Q. 180. And what—pardon me? A. I understood him to be talking about a period of time very shortly after the development of that lease; I mean, the time that lease was signed back in 1922.

X-Q. 181. What effect did you give in your conclusions this morning on direct testimony to what you heard from Mr. Prince, if any? A. I took into consideration Mr. Prince's testimony as indicating that at or shortly after the time this lease was entered into he thought the lease was perfectly sound and that other railroads would have been willing to have bought it from him; that subsequently, he said that all railroads were in danger, in 1930 to '33. In fact, he thought, I believe, that if it hadn't been for the

R.F.C., all of them except the coal roads might have gone into receivershipment, and so I assume what I believed to be a fact aside from Mr. Prince's testimony, that the assurance with regard to the ability to release this road in case the New York Central gave it up did not apply to the periods '30 to '33, but to the period close to the time when the lease was entered into.

X-Q. 182. It is my recollection, and I may be wrong and subject to correction, but let's see if it is your recollection that Mr. Prince testified that he could have obtained more money at any time from another railroad than the $2,000,000 which he was obtaining from the New York Central?

Now, is that your recollection? A. That wasn't my understanding. The record may show that I am wrong, but that was not my understanding.

X-Q. 183. Do you recall—I think you did say this—but do you recall that you said this morning that the trustees under the New Jersey Company's bonds could probably take over the C. M. D. on a foreclosure if it had been affected? A. No, that wasn't quite what I said.

X-Q. 184. Well, now, please restate it. A. I said that the trustees under the New Jersey bonds undoubtedly would foreclose on the collateral and the C. M. D. certificates were not, as I understand it, part of the collateral, but I also said—I went on and said that undoubtedly the certificates in the Central Manufacturing District would be impounded, I believe is the word I used, for the protection of the guaranteed bonds and for any deficiency that there might be in the collateral of the Jersey bonds, and by "impounded" I had in mind that the court would undoubtedly appoint a receiver, and that the receiver would take charge of all those, and that they would be disposed of for the benefit of the creditors; at any rate, that the Maine Company would lose control over them.

X-Q. 185. Do you know whether or not any sale was made of C. M. D.?

Mr. Welch: Do you mean of C. M. D. certificates?

Mr. Clark: No. I beg your pardon. I do mean certificates.

(Pause.)

The Witness: Pardon me, Your Honor. There is something in the record here I want to get.

Yes.

X-Q. 186. (By Mr. Clark). Then will you please tell what that sale was, when and to whom and to what extent? *A.* I am trying to find the answer. I am quite vague on that, Mr. Clark. I am under the impression that there was a time when the Central Manufacturing District Company was organized and that some of the shares of Central Manufacturing District were conveyed to it and subsequently were conveyed back. That is what I was trying to find, and I seem to be at a loss to find it in the record. I know it is in the stipulation somewhere.

X-Q. 187. Take as much time as you want.

The Witness: Your Honor, could Mr. Green, who is more familiar with this stipulation, find this for me?

X-Q. 188. (By Mr. Clark). Perhaps, if you will pardon me, I might direct attention particularly to 1936 and ask if any sale then was made of C. M. D. certificates. *A.* I am sorry, I closed my review of this case with 1933. It seemed to me that if I was going to put myself in the frame of mind of a person in 1933, I ought to stop there.

X-Q. 189. Do you have from your research any opinion as to the possibility of the Maine Company purchasing bonds of the New Jersey Company in the open market during 1930 to 1933 or prior thereto? *A.* Will you read that question?

(Question read.)

A. I have made no researches in the market itself. I have discussed the problem with representatives of the company as to the possibility, and I understand from them that it has already been testified to, that there were some that could have been gotten, that the market was fairly thin and had they gone into the market they could not have gotten very many, and that often these casual sales went through before they even knew they were for sale.

X-Q. 190. Have you formed any opinion as to whether it was possible during these years to purchase bonds of the Elevated Railroad Company in the open market? A. No, I haven't.

X-Q. 191. Do you know what the prices of these bonds I am referring to now to either Elevated, as we call it, or the Maine Company, were in the open market during the years here involved, 1930 to 1933, and for prior years or any years prior thereto? A. The Railway?

X-Q. 192. The Elevated. What we call the Elevated. A. These that are guaranteed by the New Jersey Company?

X-Q. 193. Well, I can't say that. I believe it is the Railroad. A. Yes. No, I don't know what the market was.

X-Q. 194. Now, let me ask you this, Mr. Blough: Wouldn't it in your opinion have been possible to effect a substantial saving by having the Maine Company buy in the bonds of the New Jersey Company and Railroad Company instead of waiting for the maturity of those bonds to pay more? A. Yes, sir; I think it would. I am assuming, of course, that it would have been possible to have gotten a substantial number of them. I think there is danger that that might have been not true, but assuming that it was, I think that your statement is correct.

X-Q. 195. And you haven't advised yourself as to whether that was true? A. Well, only in the way in which I said. I inquired from the officers of the company.

The Member: Let me go back to this last question a minute and ask at what price you were assuming the purchase of the Railway bonds in order to effect this saving?

The Witness: Possibly I did a little loose speaking with regard to the Railroad bonds, because I don't know the prices of those, but we do know that there were some of the other bonds on the market, and I think a sheet was introduced in evidence yesterday indicating something about the prices of the others, and I was more or less going on that rather than on the railroad bonds.

The Member: But as to the bonds other than the railroad you were taking, you were assuming the purchase at the prevailing market prices?

The Witness: At the prevailing market prices. Some of them ran a little below par and some of them a little above par, and that is why I said assuming that you could get any substantial number at those prices. I don't know whether you could have or not. The officers led me to believe that it might not have been possible.

X-Q. 196. (By Mr. Clark). Do you know what was the amount of the assets of the Maine Company which were not invested in the securities of its subsidiaries in the years 1930 to 1933, inclusive? *A.* Yes, sir.

X-Q. 197. And what was that amount? *A.* That is the Maine Company now you are speaking of?

X-Q. 198. Yes.

Mr. Welch: If Your Honor please, could we have a short recess?

The Member: Yes.

Mr. Welch: If not, I shall ask to be excused personally.

The Member: No, no. We will take a few minutes recess.

Mr. Welch: Thank you.

(There was a short recess taken.)

Mr. Clark: I have forgotten, Your Honor, at what point I stopped when we had the recess.

The Witness: I believe I can repeat the question, almost. It related to what—

X-Q. 199. (By Mr. Clark). Did I ask you, Mr. Witness, what the amount of assets of the Maine Company was, not invested in securities of its subsidiaries in 1930 to 1933? A. That is my understanding of what your question was.

X-Q. 200. Have you replied to that? A. I had not.

That information is contained in S-52 of the stipulation and will require a trifle—unless I am to detail the assets—will require a little computation to get the total amount. Which do you prefer?

X-Q. 201. Please state the total amount. A. That is the assets exclusive of the investment in the New Jersey Company; is that it?

X-Q. 202. Yes, that is correct, and Produce Terminal. A. And Central Manufacturing District?

X-Q. 203. Yes. A. How about Western Associates?

X-Q. 204. Well, you can leave that out.

Mr. Welch: If Your Honor please, I believe the witness is figuring on the exhibit, itself, which seems to be undesirable.

The Witness: I am sorry; I was.

Mr. Welch: I think it is an official copy he is using, and, therefore, I think it would be better to figure off of it.

The Member: Yes; I thought it was his own copy so I didn't say anything.

(The witness made calculations.)

A. In the year 1930, at December 31, 1930, the assets of the Maine Company, if I have done my adding and subtracting correctly, exclusive of their own bonds in the treasury, was $14,549,310.39.

That should be amended to reduce it by $800,000 of the

notes of the Central Manufacturing District which I assume, from what you are working at, you want to be deducted, so that instead of the figure I gave, it should be $13,749,310.39.

X-Q. 205. (By Mr. Clark). That is in accordance with your research? A. That is in accordance with the calculations I am making right now. That is the only basis I have. "1932" excluding the notes from these subsidiary companies, and excluding treasury bonds, the amount is $16,140,258.24. But in that amount there is $327,307.55 of the notes that were taken over from the Central Manufacturing District Bank, which the testimony showed had no marketability at that time, and also advances to the Stock Yards National Bank and the Stock Yards Trust & Savings Bank of $3,071,779.19.

In 1933, the amount appears to be $14,273,081.50, including these notes receivable taken over from Central Manufacturing District Bank of $322,801.51, and exclusive of the subordinated deposit in the Live Stock National Bank of a million, eight hundred. That is assuming that my hurried calculations from this Exhibit S-52 are correct.

X-Q. 206. What do you think would be the attitude of a wise sagacious manager of a business who is concerned about the approaching maturities of bonds such as these of the New Jersey Company in 1940, if he were the manager of the Maine Company—would be as to whether he would use a substantial amount of the free assets of the overlying company, the Maine Company, to purchase the bonds of the New Jersey Company? A. Well, I think

X-Q. 207. —prior to maturity, of course. A. Yes. I think I, personally, would favor attempting to get a substantial number of those bonds in. Of course, trying to protect a reasonable amount of cash for emergency, that amount of cash that is necessary for emergency is something that entrepreneurs differ on pretty substantially.

There are some financiers who go very strongly on the importance of having a large amount of cash for bargaining power when they go in to make a deal with the bankers, and I feel if they have got a lot of cash they do better than if they have got a smaller amount of cash even with a smaller amount of bonds.

I am frank to say, personally, and I think that is what you are trying to get from me, and I am trying to meet the spirit of your question, personally, my own personal reaction would have been to try to get up more of these bonds saving the interest on them and holding them against 1940 when they would not then have to be met, but that is, as I say, a question on which many financiers have pretty strong feelings, particularly if you are in a period when it doesn't look as though you might be able to get a very good banking deal.

X Q. 208. Do you know at what prices preferred stock of the New Jersey Company was selling at in 1930 to 1933? Or in any of the prior years? *A.* The record shows, I believe, that the preferred stock sold, for the most part, above par, but that in 1932 and 1933 it fell below par.

However, when I inquired about that I was also given to understand that there was very little preferred stock that was really available.

X Q. 209. Well, did you obtain advice as to what extent it fell below par? *A.* I have no independent research as to the value of it. The value which I am relying on is that value which the officers gave me and which is included in one of the documents that is on file in this case.

X Q. 210. Do you recall what document that is? *A.* I can tell you in a minute.

Mr. Green: S-60. It is attached to the stipulation.

A. I am afraid I will have to correct my statement, that there is a copy of the quotation, I believe, on turning to this

exhibit. What it shows is the number of shares that were acquired by the company and the cost of them, from which a computation reveals that in—for the years that are exhibited here, they were below par during 1931, 1932, and 1933; not greatly below par.

X-Q. 211. (By Mr. Clark). Have you finished in that regard, Mr. Witness? A. Yes, sir.

X-Q. 212. Now I am directing your attention to another line of thought—

(Counsel for the Respondent confer.)

The Member: Now we are getting to the point that I referred to the first day, that if this huddle system keeps on too long, I have got to stop it. Every question is preceded by a conference and we are getting along very slowly, entirely too slowly.

Mr. Clark: Well, Your Honor, if you will pardon me, I don't think we are getting along very slowly and I don't think we are the only parties which might be considered as offending, although I will say that there has been more conversation here than there has been at the other table, but I would like to avoid it if I can, and I will attempt to do so.

X-Q. 213. (By Mr. Clark). Do you remember this morning that you testified relative to a two million dollar rental of the Railway Company from its lease to the New York Central? A. Yes, sir.

X-Q. 214. Did you expect that that rental would be stopped? A. I didn't anticipate that it would be stopped. I didn't mean to indicate that I anticipated it would be stopped, but I did say that I thought the situation in the Railroad field—New York Central stock dropped from something like 260 down to 7 or 8 a share during that time.

The whole railroad field was in turmoil. That, considering the conditions in the railroad field and considering the

fact that the people in this organization had continuously felt the urge to build up traffic so as to make that lease stick, gave evidence of the fact that there was danger that the lease might be given up.

That is all I intended to imply; not that I thought that it would.

X Q. 215. I believe from what you stated this morning that there was nothing to indicate that you were an attorney? A. No, sir.

X Q. 216. Have you ever made any investigation relative to the question of whether or not the New Jersey charter, as a corporation, might be extended as it had been extended? A. Yes, I made inquiry with respect to that, in the particular case.

X Q. 217. And what did you find out? A. I learned that it was the opinion of counsel in this particular case that the New Jersey charter could be extended with a two-thirds vote of both classes of stock.

X Q. 218. When you speak of counsel in this case, do you mean counsel who are present here at this time? A. I mean counsel that are present here and, I believe, this morning it was offered for the attention of the court—

X Q. 219. That is all.

Mr. Clark: I ask the rest be stricken.

X Q. 220. (By Mr. Clark). Now, you spoke of obligations of the New Jersey Compa[illegible] for 18½ million, didn't you? A. That is right.

X Q. 221. Now, do you know what the interest charges on that obligation were? A. The interest on the New Jersey bonds, themselves, 4 percent on $4,000,000; 5 percent on $10,000,000; then, in that 18½ million that I mentioned, there were $2,300,000 odd of the Street Railway Company guaranteed, and those, I think—just a minute and I can tell

you what they are—it was the Railroad Company, it was the Elevated Company, is the one I am talking about—

(The witness referred to documents.)

A. (Continuing) —4 percent bonds on those Chicago Junction Railroad Company bonds; that par 4 percent and then there is 2¼ million dollars that I mentioned in that figure, of Central Manufacturing District bonds, and those are guaranteed by the New Jersey Company, as are also the Railroad bonds and those Central Manufacturing District bonds—

X-Q. 222. Well, no; all I am asking you is what the interest charges were; not whether anything is guaranteed or not. A. I am explaining which bonds I am referring to.

Well, the interest charges for these Central Manufacturing District bonds did not accrue to the New Jersey Company. The only charges they had for interest was 4 percent on the $4,000,000 of their own bonds; 5 percent on the $10,000,000 of their own bonds, and then during a portion of the period, 4 percent on the two hundred and thirty odd thousand that they had to pay for the benefit of the Railroad Company, which was not collecting its rental.

X-Q. 223. Now, then, can you tell me the answer to the question I asked, as to what the interest charges were on this 18½ million; the annual— A. I am sorry, I don't believe I have that information. I could only impute it by computing the interest rate on the face of the bonds. I don't have the details of that figure.

X-Q. 224. Then I take it you have no personal information as to the relationship of the $2,000,000 annual rental from the New York Central to the amount of these interest charges; is that right? A. I can't quite see what bearing they have.

X-Q. 225. No. I ask you to answer the question.

Mr. Clark: Mr. Reporter, will you read it, if the witness doesn't understand it?

(Last question read.)

A. I am afraid I don't.

X-Q. 226. (By Mr. Clark). Did you, in your investigation, discover what year the Indiana Harbor Belt Railway bonds were issued? A. I think I have that information somewhere.

Those were issued in 1907.

X-Q. 227. All of them in that year? A. Wait a minute, I think I got the wrong one. I was thinking of the Railroad bonds of the Lake Shore & Michigan Railroad Company that came over of 2½ million. 1907 is not the year.

March 1, 1905, is the year in which the $2,327,000 of 4 percent first mortgage bonds of the Chicago Junction Railroad Company were issued.

X-Q. 228. That is, the entire issue of those bonds, so far as you know? A. That is right.

X-Q. 229. Do you know what the income from those bonds was? A. Four percent—well, in the first year—there was a sliding scale in the early years. I have forgotten exactly what it was, but the first year or two it was one or two percent and then it jumped a little more until finally after three or four years it got to 4 percent, but that was away back between 1905 and 1910. By 1910 I think it was par 4 percent, and carried that throughout the period under consideration.

X-Q. 230. Have you in your consideration of the inclusions that you have stated considered whether or not this might have been applied to prior funds for the maturity of the Jersey Company bonds? A. These bonds were bonds which were guaranteed by the New Jersey Company and had no value of themselves except the guarantee of the New Jersey Company, and I can't quite imagine that there

would be in any way in which they could be used as collateral or as a basis for paying off the New Jersey Company's own bonds.

X-Q. 231. I am directing your attention to a different line entirely now, Mr. Witness, and I may have some difficulty in reading some of the notes which I have before me, so I will ask His Honor's indulgence, and yours, for a moment.

Referring to the New York Central lease, do you know whether or not the Interstate Commerce Commission has approved or disapproved the rental paid for that lease? *A.* There is in the documents filed in this case an order of the Interstate Commerce Commission approving the $2,000,000 rental but reserving the right to reopen the case on its own motion.

X-Q. 232. Referring to what is known as the Railway Company—I have forgotten whether it is described as that in the vernacular here—am I right in referring— *A.* It is the Steam road?

X-Q. 233. No, it is the Railway. *A.* Railway Company is the steam road.

X-Q. 234. I see.

Do you know of any portion of the Railway operating revenues which are derived from the divisions with trunk line railroads? *A.* It is my understanding that any division of rates with trunk line railroads goes to the New York Central, that all the Railway Company gets out of it is its $2,000,000 rental from the New York Central, and any adjustment with trunk lines for short hauls in there is a matter for the New York Central to determine.

X-Q. 235. Well, aren't there railway revenues from switching and trackage rights? *A.* Undoubtedly the Railway—I mean the lessor; the lessee, that is, the New York Central, of this railroad gets charges for switching and trackage rights, and so forth, and if the Railway Company

had the possession of its property and were operating it, that would be its source of revenue, but—I mean, one of its sources of revenue, but, as I understand it, it gets nothing for that now, that being entirely a matter for the New York Central, which is the lessee of the road.

X-Q. 236. Well, am I right or wrong in thinking that you stated that the Railway Company derived revenues from trunk line railroads for loading and unloading? *A.* You are wrong in that, sir. The Transit Company is the one. That is the one that operates the stock yards, themselves, and, as I understand it, gets the loading and unloading charge from the railroads.

X-Q. 237. So, if I am wrong, you want to correct me in that regard? *A.* Well, that wasn't part of my testimony; that was somebody else's testimony.

X-Q. 238. I see. *A.* That was my understanding of it.

X-Q. 239. I had an idea that you testified to that effect; but I may be wrong, sir. Do you know whether or not the lease to the New York Central was contested by other railroads? *A.* Yes; it is my understanding that there was a suit by one of the other long-line railroads attempting to invalidate that lease.

X-Q. 240. Do you know whether there was more than one railroad involved in that suit in the attempt to invalidate the lease? *A.* Well, I don't really know. It is my impression that there were several, but I don't know for sure.

X-Q. 241. Have you made any investigation in that regard? *A.* Only to learn that there had been such a suit and that it had been settled, I believe.

X-Q. 242. And from whom did you learn that? *A.* Some of the officers of some of the companies. I wouldn't want to say right now where I got the information.

X-Q. 243. Somebody told you? *A.* That is right. I have

no court records that I have inspected giving the information on it.

Mr. Clark: Please pardon me a moment, Your Honor. (Pause.)

X-Q. 244. (By Mr. Clark). Do you have any familiarity with the rate-making policies of the Secretary of Agriculture of the Department of Agriculture as to the stock yards? *A.* Only in general.

X-Q. 245. And from what source do you have that information? *A.* Well, my general reading in economics, and my discussions with a gentleman who happens to be the chief accountant in charge of that work. I have gotten a somewhat general idea as to what the responsibility and authority of the Secretary of Agriculture is over the stock yards. It is my understanding that he is in a position to fix the rates for the care of cattle, the feeding, and handling, and so forth, and that he is required to allow the usual rate of return much as any public utility regulatory body has authority over a public utility.

X-Q. 246. Do you have from your investigation relative to this case, or in any other way, any information as to whether since the passage of the Packers and Stock Yards Act, so-called, through the year 1933, any rate has been cut by the Secretary of Agriculture? *A.* Well, I know there has been a cut in the handling charges of cattle, but when that was, whether it was during this period or before or after, I don't know.

X-Q. 247. How did you get that information? *A.* Well, it is information that I had before I came in contact with this case, and I can't identify my source now.

X-Q. 248. Have you in the course of your preparation for testimony in this case investigated a contract dated October 1, 1914, which is an exhibit here. *A.* Let's see. That

is the one that relates to the by-passing, so to speak, of the dividends passed the New Jersey Company?

X-Q. 249. Yes, that is the one. *A.* Yes, I have read that.

X-Q. 250. Now, in reading that, did you form any conclusion as to whether the Maine Company, so-called, disclaimed all liability for the bond obligations of the New Jersey Company? *A.* I am sorry. I don't remember that feature of it.

X-Q. 251. I believe that you testified, Mr. Blough, that, as you understood it, the preferred stock of the New Jersey Company was closely held; am I correct in that? *A.* No, sir.

X-Q. 252. Have you formed any opinion as to whether or not it was closely held? *A.* I made inquiry as to that, and I understood that it was held by a very large—by a substantial number. It seems to me the figure ran over 2,000 stockholders.

Mr. Clark: I have no further cross.

Mr. Welch: I have nothing in redirect, Mr. Blough. I am very much obliged to you, sir.

The Member: May I ask you just one or two questions?

The Witness: Surely.

The Member: As I understood you on your direct examination, in elucidation of your opinion about the reasonableness of the acquisition of this fund by the Maine Company against the emergencies up to 1940, that was the principal ground upon which you justified the holding of these companies, and I want to know whether in view of the fact that the Maine Corporation shares were all owned by one man, whether it would not in your opinion have been equally efficacious for the purpose of meeting the 1940 de-

mands and the other demands to have the same moneys held in the hands—distributed to and held in the hands of the only shareholder? A. The question there, of course, rests entirely on what the only shareholder would have done with it. As long as it is in the corporate structure itself, it is there available for the corporate officers to act with without any action by the individual shareholder. The shares are there as protection.

The Member: The shares?

The Witness: I mean the moneys are there as protection to persons who are interested in the obligations of the organization. Of course, if there is a sole stockholder—

The Member: There isn't any question about that, is there?

The Witness: No. Oh, no.

The Member: There is a sole stockholder, isn't there?

The Witness: If you have a sole stockholder, and if there is some provision on his part for keeping those funds intact in his own possession, they are probably about as safe there as in the corporate possession as long as he can dictate the corporation policies. That is absolutely true. On the other hand, those funds are not in the corporation for the benefit of the corporation, and the action of other members of the board of directors, and in case anything should by chance happen to him, the creditors of this underlying company, the New Jersey Company, should be protected, and while that might be a very good reason for having left the funds with the New Jersey Company, and that is entirely possible, that the funds might better have been left down there, but, at any rate, while they are in this corporate structure, they appear at least to be more secure for the interests of the enterprise than once when they have been

completely withdrawn and taken out of the corporate structure.

That would be the only reply to that I would have to make to Your Honor.

The Member: Now, as long as they are held by the corporation and the corporation shares are entirely held by one individual a creditor can feel no greater security of the retention of those funds than he could feel than if they were held by the individual, can he?

The Witness: The creditor of the Maine Corporation could but I will agree that the creditor of the Jersey Corporation possibly could not; although I do think there is quite a—at least a psychological difference between having funds devoted to a corporate purpose and having them entirely pulled out of the corporate enterprise and devoted to a personal purpose.

The Member: Is that only because the times are attuned to corporations and that things that are in the hands of a corporation are sort of imponderably believed by some people to be safer than if they were in the hands of an individual? Is that all it amounts to?

The Witness: No, I don't think that that is it.

The Member: What is it? I would like to get something substantial to grasp as to an amount in the millions of dollars that is in the hands of a corporation all owned and controlled by one individual than the same amount in the hands of that one individual. Doesn't it all come down to the integrity or confidence in the indiyidual?

The Witness: Well, I shall have to say that there is a great deal in what you say, Your Honor.

There is the further thing that so long as it is in the corporation it is one more step removed from the point

where the single stockholder can write his check and spend it as he pleases. As long as it is in the corporation it is devoted to the purposes of the business. When it is not he can draw a check and do as he pleases. As long as it is in the corporation it takes a formal legal action to remove it from the business enterprise.

The Member: But that is all it does take, isn't it, merely formal action? I mean, when he is the only interested person there isn't any question about the legal action, is there: all he has to do is to declare a dividend, doesn't he, or require the directors to declare a dividend?

The Witness: Surely. The legal aspect—

The Member: They act entirely at his suggestion in that respect, don't they?

The Witness: That is right.

The Member: They hold their office at his behest, don't they?

The Witness: Undoubtedly if he told them to declare a dividend they would declare it.

The Member: Here there was not any actual chance of demand by others that could impede his action about distributing, was there?

The Witness: The only thing that there was directly were the holders of the Maine Company bonds, themselves; and, of course, I suspect that the holders of the New Jersey common stock who had this guarantee, who had to guarantee his payment up to 9 percent dividends, would have a right against the directors if these funds had been distributed and they had been left without protection for their guarantee because, actually, there were times when they got down into the red, and if the Maine Company had not

protected its funds and been in a position to maintain the guarantee, or if the company had gotten into serious difficulty so that they couldn't have paid the guarantee and they had depleted their assets through large distribution of dividends to the stockholder of the Maine Company, I should think that that might have been something for causing them to pause.

The Member: But if the individual had retained the funds in the same form in which they had been retained by the corporation, there would have been no chance of an action like that by these guaranteed shareholders, would there?

The Witness: Well, assuming he had brought them back in and taken care of the situation.

The Member: He could have seen to it at any moment that the funds with which the guarantee could be assured were kept in a place where they could be used for that purpose, just as the corporation could, couldn't he?

The Witness: That is right. He could. The thing I had in mind was—

The Member: So that it became only a question of integrity.

The Witness: As it turns out, that probably is the primary distinction, but suppose that these dividends had been declared and then suppose there had been losses and Mr. Prince's fortune had disappeared, you would then have had the bondholders of the Maine Company and also these guaranteed stockholders looking to a corporation that had been depleted and the individual had gotten into financial difficulties.

As long as those funds are devoted to the corporate

purpose and taken care of for corporate purposes only, they are not in danger of being frittered away, otherwise.

The Member: One other thing: You spoke throughout your testimony of the New Jersey Company as the holding company, didn't you?

The Witness: I used that term, calling it an intermediate holding company.

The Member: Yes. And is the Maine Company, in that vernacular, any less a holding company?

The Witness: Oh, no, it is a holding company in the vernacular that I was using.

The Member: Yes.

That is all.

Mr. Welch: That is all, Mr. Blough. (Witness excused.)

Mr. Clark: I wonder, Your Honor, if we might suspend now. I understand the Petitioner has one more witness.

Mr. Welch: One or two.

The Member: All right, we will suspend now until 10 o'clock tomorrow morning.

(Whereupon, at 4:20 o'clock p. m., February 2, 1939, the hearing in the above-entitled matter was adjourned.)

[Title omitted.]

FIFTH DAY.

REPORTER'S MINUTES.

[Filed February 4, 1939.]

Hearing at Washington, D. C., on the 3rd day of February, 1939, at 10 o'clock a. m.

The hearing in the above-entitled proceeding was resumed on this the 3rd day of February, 1939, before the HONORABLE JOHN M. STERNHAGEN, Member of the United States Board of Tax Appeals, pursuant to adjournment heretofore taken.

Appearances: (Same as heretofore noted.)

PROCEEDINGS.

Mr. Welch: I would like now to offer, if I may, and I understand there is no objection, the original tax returns of the Maine Company, the taxpayer, with the understanding, I think, that photostats will be substituted.

I offer first as Exhibit No. 41, the tax return of the taxpayer for the year 1930.

Mr. Pierson: No objection.

(The tax return for the year 1930, so offered and received in evidence, was marked "Petitioner's Exhibit 41," and made a part of this record.)

Mr. Welch: And as Exhibit 42, the return for 1931.

Mr. Pierson: No objection.

(The tax return for the year 1931, so offered and received in evidence, was marked "Petitioner's Exhibit 42," and made a part of this record.)

Mr. Welch: And as 43, the Petitioner's income tax return for the year 1932.

Mr. Pierson: No objection.

(The tax return for the year 1932, so offered and received in evidence, was marked "Petitioner's Exhibit 43," and made a part of this record.)

Mr. Welch: No. 44, the Petitioner's income tax return for the year 1933.

Mr. Pierson: No objection.

(The tax return for the year 1933, so offered and received in evidence, was marked "Petitioner's Exhibit 44," and made a part of this record.)

Mr. Pierson: If Your Honor please, let the record show that those returns are furnished by the Respondent.

Mr. Welch: Mr. Green, will you take the stand, please? I am about to talk about another chart, and I again have one of reduced size for Your Honor (handing a chart to the member).

MR. LAWRENCE E. GREEN

called as a witness by and on behalf of the Petitioner, and, having been first duly sworn, was examined and testified as follows:

Mr. Welch: I would like to say, if Your Honor please, that I had originally intended that Mr. Walker, the next expert, should testify as to the preparation of the chart, but it occurred to me last night that we would go much more swiftly in both direct and cross if Mr. Green testifies to the mechanical preparation of it because he is somewhat more familiar with it.

Direct Examination.

Q. 1. (By Mr. Welch). Your full name, sir? A. Lawrence E. Green.

Q. 2. And you live where, Mr. Green? A. Dedham, Mass.

Q. 3. You were sworn just now? *A.* Yes, sir.

Q. 4. Have you been engaged in the preparation of this case for trial? *A.* I have.

Q. 5. Did you at some time confer with a Mr. Walker in reference to the preparation of a chart for use in this trial? *A.* Yes.

Q. 6. With what Mr. Walker? *A.* Mr. Elisha Walker.

Q. 7. About when did you first confer with him about it? *A.* My best recollection is that it was in the late autumn or the latter part of 1938.

Q. 8. As a consequence of that, did you do some work in preparation of a chart? *A.* I did.

Q. 9. What did you do first, Mr. Green? That is to say, did you produce something other than what is in the court room, first? *A.* I first produced on a somewhat smaller scale but in the same proportions a chart, a copy of which is on that easel. I then showed that chart to Mr. Walker. We checked it and after checking it, I turned the checked chart over to a mechanical draftsman, who could do this thing more artistically than I could, and instructed him to enlarge it, I think, to double its size. He then prepared a plan of the chart, which I checked, and this chart which is on the easel is developed from that plan by some kind of photographic process.

Q. 10. Have you in the courtroom the material from which the chart was prepared? *A.* I have.

Q. 11. What is the basic source of the figures that are represented on the chart? *A.* The exhibits attached to the stipulation, particularly S-4, S-6, S-9, S-13, S-15, S-27, S-35, S-37, S-52, S-59, S-60, S-62, S-64, and Petitioner's Exhibit 38.

Mr. Welch: I would like, now, to offer the chart in evidence so that it will have a number and be referred to properly in the record.

Mr. Clark: Your Honor, I think it should be marked for identification at this time. I am not ready to admit it in evidence without objection.

The Member: Do you make an objection?

Mr. Clark: I make an objection; yes, sir.

The Member: It is offered and if you have any objection, now is the time to make it.

What is your objection?

Mr. Clark: My objection is that while this statement of the basic figures have been made there hasn't been any identification of those figures and there is nothing I can tell with reference to this chart as to what those figures mean which are contained in S-4, S-6, S-9, and so forth.

The Member: I will overrule the objection.

Mr. Clark: And will you note an exception, Your Honor.

The Member: Yes.

What is the number?

The Clerk: No. 45.

(The chart so offered and received in evidence was marked "Petitioner's Exhibit 45," and made a part of this record.)

Q 12. (By Mr. Welch). Mr. Green, directing your attention to Petitioner's Exhibit 45, will you now be good enough to tell us what that chart contains and how it is made up.

A. Perhaps the best way to do that is to take any year. I will take the year 1933, as an example.

The red column on that chart up to the point marked "b" represents the outstanding bonds at par of the Maine Company, the New Jersey Company, the Railroad Company, and the Central Manufacturing District.

Up to, I think, 1930, and while bonds of the Transit Company were outstanding in the sum of $500,000, that column in each of the years up to 1930 includes those bonds.

Also during a short period in the early '20's there were

some bonds of the Railway Company outstanding and during the years that those bonds are outstanding they appear on that chart in that portion of the red column headed "b."

The portion of the red column from the top of "b" from the top of the portion of the column headed "p" represents the preferred stock of the New Jersey Company outstanding in the hands of the public at its par value or the amount necessary to retire that stock at par.

That portion of the red column in the box headed "c" represents the amount of money necessary to purchase all common stock of the New Jersey Company outstanding in the hands of the public at its market value at the end of each year.

The Member: Mr. Welch, are there additional copies of this in your possession now?

Mr. Welch: Yes.

The Member: I notice that there are some people whom I suspect are experts on one side or another. They are going to be required to counteract the force of this and I think it would be useful to everybody if some extra copies could be distributed around instead of craning their necks in order to see what is on the chart.

Mr. Welch: May I say a word off the record?

The Member: Yes; off the record. (There was a discussion off the record.)

Q. 13. (By Mr. Welch). Will you proceed, Mr. Green? A. The blue column, taking the year 1933, for example, includes the resources, certain resources of the Maine Company and the other companies which appear—and all of the other companies which appear on Petitioner's Exhibit 1.

For the Maine Company there is included in the blue column as of December 31, 1933, its cash, accounts receiv-

able, notes receivable, its investment in Central Manufacturing District 5 percent bonds and its other investments which appear on S-52.

For the New Jersey Company there appears its cash—

Q. 14. There appears where, please? *A.* In the blue column—there is included in the blue column its cash and other investments as appears on S-27.

There is also included the Indiana Harbor Belt Railroad Company bonds at a value of $2,500,000.

This item appears on S-27 at a value of $50,000. That was the book value of its bonds on the books of the New Jersey Company.

Q. 15. But it is taken into the blue column at what figure? *A.* It is taken into the blue column at $2,500,000.

For the Transit Company there appears its cash and other investments as taken from S-4.

For the Harness and Saddlery Company there appears its cash as taken from S-6. It had no other investments.

Q. 16. And once again, when you say "it appears"—? *A.* It is included in the blue column.

All of these items I am not giving are in the blue column.

It is included in the blue column for the Railroad Company its cash and investments as appears in S-9.

For the Central Manufacturing District there is included in the blue column its cash and other investments as appears in S-35.

For the produce Terminal Corporation there is included in the blue column its cash and other investments as appear in S-15.

For the Central Storage and Forwarding Corporation, there is included in the blue column its cash as appears in S-37. It had no investment.

For the Pau Corporation, there is included in the blue

column its cash as appears in S-64. It had no other investments—it had no investments.

The total of all of those items which I have described composes that blue column for 1933, and I have gone through a similar process in each of the years, both as to the red column and the blue column.

Mr. Welch: You may inquire, Mr. Clark.

Cross-Examination.

X-Q. 17. (By Mr. Clark). Mr. Green, I am sure you are quite aware that I have never seen this chart before. *A.* I think that is correct.

X-Q. 18. And have never even heard anything about it. *A.* So far as I know, you haven't.

X-Q. 19. Consequently I have to ask you quite a few questions because I am not at all clear about this. Do I understand that this chart—

Mr. Clark: And Your Honor has before you a copy of it?

The Member: Yes.

X-Q. 20. (By Mr. Clark). I understand this chart was prepared by you? *A.* Yes, sir; that is, not the final, artistic copy.

X-Q. 21. No. *A.* But the chart—all the real work and preparation was done by me.

X-Q. 22. Now, let me see: There is a red column here which you say shows "Requirement for Money to Discharge Fund Debt Represented by Bonds and to Liquidate the New Jersey Company." Does that start with the year 1911? *A.* It starts with December 31, 1911; that is the first column.

X-Q. 23. Well, now, please tell me what you mean by that. *A.* I mean the amount of money required to pay off the outstanding bonds of the Maine Company held by the public at par, the outstanding bonds of the New Jersey Company at par; the outstanding bonds of the Railroad

Company at par; the outstanding bonds of Central Manufacturing District at par; the amount of money required to pay off the New Jersey Company preferred stock outstanding in the public at par, and the amount of money required to purchase the New Jersey common stock outstanding at the end of the year at its then market value.

X-Q. 24. And that is all combined in this red column? A. That is correct.

X-Q. 25. Now, what basic sources did you use in arriving at this determination of the amount required? A. I think I have just stated.

X-Q. 26. Well, I am not clear about it. A. I used the par value of the Maine bonds, the Maine Company bonds, which were outstanding in the hands of the public, the par value of the New Jersey Company bonds, the par value of the Railroad Company bonds, the par value of the Central Manufacturing District Company bonds, the par value of the New Jersey preferred stock, which is outstanding in the hands of the public at the end of each year as shown by S-60, and the market value as shown by Petitioner's Exhibit 38 of the common stock of the New Jersey Company, which is outstanding in the hands of the public at the end of each year as shown by S-59.

X-Q. 27. Well, that is, you took the par value of these bonds in this preferred stock in this year without any equation for discount, or anything of that sort? A. Yes, sir.

X-Q. 28. Do you think that is a correct method? A. I think so.

X-Q. 29. Are you an accountant? A. Sort of by hand; I am not one by training.

X-Q. 30. Did you have any advice from an accountant in arriving at that determination? A. No, sir.

X-Q. 31. Now, is that same situation true as to each of these red lines? A. You mean the red columns?

X-Q. 32. Yes. *A.* It is. The same situation is true for each year except that, as I have stated, in some of the years there were bonds of the Transit Company and the Railway Company outstanding, and I put them in—put the outstanding bonds in at their par value.

X-Q. 33. Now, I hadn't examined with reference to your testimony these exhibits to which you have referred, but it is my understanding, and I have no particular desire to question you relative thereto, that all of this information which you used in your own particular manner came from these exhibits? *A.* That is correct, except that I should have added, Mr. Clark, that the story about the Indiana Harbor Belt Railroad Company bonds is not contained in the exhibits but in the stipulation itself. That was my basis for using a value—an amount—a value of $250,000 for these bonds and including it in the blue column instead of using the book value of these bonds on the book of the New Jersey Company, which was much less, only $50,000.

Mr. Welch: May we have the last answer read?

Mr. Green, I think you have got a mistake in amounts, which is unlike you. (Answer read.)

The Witness: If you will strike out the figure "$250,000" in that answer, and include "$2,500,000," for the value of the Indiana Harbor Belt Railway Company bonds, it will be correct. I am sorry. That was an inadvertent mistake.

X-Q. 54. (By Mr. Clark). I am directing attention now to these blue columns, Mr. Green. Will you please tell me if they reflect the changes which were made in the stipulation prior to its ultimate signature? *A.* I cannot answer that question "yes" or "no," Mr. Clark.

X-Q. 35. Well— *A.* I can explain to you how they affected it, if you want, how they did or did not affect it.

X-Q. 36. Well, now, answer me this: When was this made up by you? *A.* It was finally made up within and sent to

the draftsman and finally checked, I should say, within the last two weeks.

X-Q. 37. When you say you finally made it up, do you mean finally made up by you? *A.* Correct.

X-Q. 38. Not the mechanical work? *A.* That is correct. I mean to say—go ahead.

X-Q. 39. That was prior to the signature of the stipulation ultimately filed here, wasn't it? *A.* I do not know. It was after we signed the stipulation. Whether it was after you signed it, I don't know.

X-Q. 40. Well, was it prior to or subsequent to the last changes made in the stipulation? *A.* It was prior to changes made in the stipulation which did not affect any of the items which went into this chart.

X-Q. 41. I know that you are thoroughly familiar with the stipulation, and if you say that is so— *A.* It is so, Mr. Clark.

X-Q. 42. —I will take no exception thereto. Do you know what percentage of the New Jersey Company stock was owned by the Maine Company in each of the years that are covered by the chart? *A.* I could give you the exact number of shares. I would have to compute the percentage.

X-Q. 43. Well, please give me the exact number of shares. *A.* You want me to take it year by year?

X-Q. 44. Yes, if you will, please.

Mr. Welch: Beginning in 1911?

Mr. Clark: Yes.

A. In 1911—you mean the amount that was outstanding or owned by the Maine Company?

X-Q. 45. (By Mr. Clark). Owned by the Maine Company. You might also give the total of outstanding shares as compared with the Maine Company's ownership. *A.* At the end of the year 1911, the Maine Company owned 18,705 shares of New Jersey common stock as appears from S-59.

At that time, accordingly, 46,295 shares were held by the public,—

The Member: Let me get this clear because this word "public"—

The Witness: By others than the Maine Company.

The Member: —is a fleeting word. That is all that is meant, isn't it? You are talking about the Maine Company on the one hand and everybody else on the other?

The Witness: I will use "others than the Maine Company" in each case.

(Continuing) 1912: Maine Company, 30,871; others, 34,129.

1913: Maine Company, 31,070; others, 33,930.
1914: Maine Company, 31,175; others, 33,825.
1915: Maine Company, 31,175; others, 33,825.
1916: Maine Company, 31,200; others, 33,800.
1917: Maine Company, 31,200; others, 33,800.
1918: Maine Company, 49,129; others, 15,871.
1919: Maine Company, 49,267; others, 15,733.
1920: Maine Company, 50,723; others, 14,277.
1921: 50,953; others, 14,047.
1922: Maine Company, 55,889; others, 9,111.
1923: Maine Company, 56,107; others, 8,893.
1924: Maine Company, 56,174; others, 8,826.
1925: Maine Company, 57,058; others, 7,942.
1926: Maine Company, 57,326; others, 7,674.
1927: Maine Company, 57,897; others, 7,103.
1928: Maine Company, 58,505; others, 6,495.
1929: Maine Company, 58,742; others, 6,258.
1930: Maine Company, 58,995; others, 6,005.
1931: Maine Company, 59,599; others, 5,401.
1932: Maine Company, 59,979; others, 5,021.
1933: Maine Company, 60,336; others, 4,664.

The Member: It is correct, isn't it, that this chart re-

flects the increasing amount year after year of the New Jersey common which the Maine Company acquired by showing the correlatively reducing expanse of the red column part which is marked "c"?

The Witness: Yes, sir.

The Member: Is that right?

The Witness: Yes, sir.

The Member: So that the upper part of that column between the letters "c" and "p" which is comparatively large in the year 1911, comes down to a comparatively small part in the year 1933.

The Witness: That is correct.

Mr. Clark: Please pardon me a moment, Your Honor. (Counsel for Respondent confer.)

X-Q. 46. (By Mr. Clark). What you were testifying to just now, Mr. Green, was the common stock of New Jersey, wasn't it? *A.* Yes, sir.

X-Q. 47. Now, will you please give me the same figure for the preferred stock for the same year; I mean the figure for the same year, not the same figures. *A.* Well, for each of the years from December 31, 1911, to December 31, 1928, inclusive, the Maine Company owned no New Jersey preferred stock; all of it was owned by others.

On December 31, 1929, the Maine Company owned 457 shares of New Jersey preferred stock and 64,543 were owned by others.

For 1930, the figures are: Maine Company, 647; others, 64,353.

For 1931: Maine Company, 1,263; others, 63,737.

For 1932, the figures are: Maine, 1,565; others, 63,435.

For 1933, the figures are: Maine Company, 2,362; others, 62,638.

X-Q. 48. I am sure you know, Mr. Green, and please tell the Board what the maturity date of each of the issues of

securities which is shown in the red columns. A. The maturity date of the New Jersey bond issue of $14,000,000, consisting of 10,000,000 5 percent and 4,000,000 4 percent, is April 1, 1940.

The maturity of the bonds of the Railroad Company which are guaranteed by the New Jersey Company is 1945. I don't remember the exact date.

The maturity date of the bonds of the Central Manufacturing District varies. They are serial bonds.

The date at which the last ones come due is, according to my recollection, 1941.

The bonds of the Maine Company have a maturity date of 1965, but there is a covenant in the mortgage securing these bonds that the Maine Company will keep the New Jersey Company alive, and there is further the circumstances that these bonds are secured solely by common stock of the New Jersey Company. Those are all the bond issues that are in the picture.

Mr. Welch: Mr. Green, in stating the—

The Witness: I beg your pardon, sir; and there is one other bond issue in the picture, and that is the Indiana Harbor Belt Railroad, which is included in the asset or blue column.

The maturity date of those bonds is 1957.

Mr. Welch: Mr. Green, you gave the maturity date of the Maine bonds as 1965, and you are possibly in error. Will you check it from the original.

The Witness: 1961, I think, is the correct date.

Mr. Clark: Just a moment, Your Honor.

(Counsel for the Respondent confer.)

X-Q. 49. (By Mr. Clark). You made a statement, Mr. Green, about a covenant of the Maine Company to keep the New Jersey Company alive. A. Yes, Mr. Clark.

X-Q. 50. What is that? I don't understand that and never heard of that. A. I am now reading from S-42, page 8—

X-Q. 51. Now just a moment— A. Covenant No. 12, which says: "The company shall do whatever may be necessary for the purpose of maintaining or preserving the corporate existence of Chicago Junction Railway and Union Stock Yards Company."

X-Q. 52. Now, please, just a moment, Mr. Green, because I am not entirely familiar with this. A. I will wait for you, Mr. Clark. (Counsel for the Respondent confer.)

A. Off the record, that is S-42, on page 8.

X-Q. 53. I see. Well, that was a paragraph with which I was unfamiliar. A. There is more to the paragraph but I think that is the material part.

The Member: What is the nature of that exhibit? I haven't it before me.

The Witness: That is the trust mortgage given by the Maine Company to the old Colony Trust Company as trustee to secure the issue of the Maine Company bonds.

X-Q. 54. (By Mr. Clark). I am not quite clear about this, Mr. Green.

In this chart, are the amounts of securities which mature many years later than some figures which represent stock without maturity being compared with current assets? A. I am afraid I don't quite understand that question.

Mr. Clark: Please re-read the question, Mr. Reporter. (Question read.)

A. I can't answer that, Mr. Clark, because I still don't understand it.

The Member: I don't, either. How can you have bonds maturing many years after stock which has no maturity.

Mr. Clark: Well, Your Honor, if you will permit me a moment, perhaps I can clear this up. It is not entirely

clear in my own mind. (Counsel for the Respondent confer.)

X-Q. 55. (By Mr. Clark), Are there co-mingled in the red columns bonds that have various maturity dates with preferred stock? *A.* Common stock, yes.

X-Q. 56. Yes. Now, do you think that is a correct method of procedure? *A.* I certainly do.

X-Q. 57. And why? *A.* The Maine Company in order to preserve its investment in the New Jersey Company has to discharge certain liens and other items which are ahead of its investment.

Now every one of those items must be, in effect, discharged by 1940.

X-Q. 58. Now, when you—excuse me. *A.* I haven't finished my answer.

X-Q. 59. I know you haven't.

Mr. Welch: Then let him finish, will you, Mr. Clark?

Mr. Clark: Yes, indeed.

A. (Continuing) The New Jersey bonds, consisting of $14,000,000, mature by their terms in 1940.

It has been testified here that the New Jersey Company will come to an end in 1940 by the terms of its charter.

That the charter can be continued by the affirmative votes of two-thirds of each class of stock and even though you suppose that the affirmative votes of two-thirds of each class of stock can be secured; it is not economically sound or wise to continue the existence of the New Jersey Company but is economically sound and wise to liquidate it.

I believe that, myself.

Now, if you liquidate the New Jersey Company you have to make some provision to replace the guarantee which the New Jersey Company has given for payment of bonds of the Railroad Company which mature in 1945.

Similarly, by 1940 the bonds of the Central Manufacturing

District which the New Jersey Company guaranteed will either have to be paid by their terms, because they have serial maturities, and such as don't mature until 1941 the New Jersey Company will have to put up something to replace the guarantee.

Now as to the Maine Company bonds: Although they don't mature by their terms until 1961, the only security for those bonds, they being collateral trust bonds, is common stock of the New Jersey Company. The minute the New Jersey Company disappears, the security disappears.

Furthermore, there is a covenant in those bonds that the Maine Company will keep the New Jersey Company alive. If the Maine Company liquidates the New Jersey Company it is a breach of that covenant and the bonds will immediately become due.

I have included the preferred stock at par because that is what must happen to the preferred stock by its terms in 1940 if the New Jersey Company is liquidated.

I have included the common stock at its market value, which I think was somewhat low, at the end of each year for the simple reason that in order to liquidate the New Jersey Company the Maine Company must, as a sound economic matter, get its hands on every share of the New Jersey stock which it is possible to acquire. Otherwise you have a distribution in kind of the assets of the New Jersey Company, or some kind of an appraisal. Either procedure is to be avoided, as I think we all know, if it is possible in any way to get in every share of New Jersey common.

Perhaps that is an impossibility but it ought to be done and certainly as the shares outstanding get fewer in number, the price goes up.

Those are substantially the reasons why I have included all those assets.

There is further this to be said: The Maine Company,

ever since at least October 1, 1914, has deliberately withdrawn not only from the New Jersey Company but from all of its subsidiaries and also from the Maine Company's own subsidiaries practically everything they have ever earned.

The New Jersey Company has at no time in its existence been able to discharge any of its obligations without disposing of all of its investments in the Transit Company and the Railway Company and without destroying the purpose for which both the New Jersey Company and the Maine Company were formed.

Accordingly, I have felt that the resources of the Maine Company should be available, and, indeed, I think legally they must be held available to meet not only the obligations of the Maine Company but the obligations of the New Jersey Company. That is the reason I included all those items in the red column.

X-Q. 60. Do you have a compilation of all the figures that have been used in the totals in this chart? A. I have a compilation of each item in detail and the totals that have been used in that chart which you are welcome to have.

The Witness: Mr. Welch, there is a copy on the desk.

(Mr. Welch hands documents to the witness who examines them after which they are handed to Mr. Clark.)

Mr. Clark: That is all.

Mr. Welch: That is all.

The Member: Just let me ask you one question in order to be certain that there is no outstanding doubt.

In preparing the red columns, am I to be assured now that there is nothing even verging upon an inter-company obligation in those red columns?

The Witness: There is no inter-company obligation in those red columns except one, and that is an item of Cen-

tral Manufacturing District Company bonds held by the Maine Company.

For convenience I have included both; the obligation in the red column, but I have included the amount of Central Manufacturing District bonds owned by the Maine Company as an asset in the blue column, so it washes right out.

The Member: What are those respective figures in the red column and in the blue column?

The Witness: In the year 1933, for example, in the blue column there was $30,747. Of that kind, in the red column, there is $31,000.

The Member. That is as to 1933. When does that reciprocal duplication begin?

The Witness: In 1922, in the red column, there is $27,000 of Central Manufacturing District bonds.

In 1923 there is the same amount.

In 1924 there is the same amount.

There is also one other duplicating inter-company item in 1924, which is included both in the blue column and the red column. That is an amount of Transit Company notes which is included in the blue column at $15,022.50, and in the red column at their par value, or $15,000.

1925 is exactly the same as in 1924, as is 1926.

1927 has the same inter-company reciprocal items and also has another item of Central Manufacturing District 5's included in the blue column at $40,672, and in the red column at $41,000.

The Member: Those in each instance represent Maine Corporation—

The Witness: Holdings in those bonds.

The Member: Yes. That is to say, from what you have said so far, the only inter-company item is the Maine Corporation always on the one side and one of the other corpo-

rations on the other such as the Transit Company and the Central Manufacturing District: is that right?

The Witness: That is correct. The Maine Company is always in the blue column and the other companies always in the red column.

The Member: And so far, at least, so far as you have been able to do so, I understand you have not included any inter-company transactions or reflected any inter-company transactions among the other corporations besides the Maine Company?

The Witness: That is correct; no inter-company transactions shown such as included at all, I am confident, there are none except these I mentioned.

The Member: Now, you stopped at 1922, didn't you?

The Witness: '27, I thought.

Now, 1928, there is included in the blue column, Central Manufacturing District 6's there carried by the Maine Company at $27,000, Central Manufacturing District 5's held by the Maine Company at $57,717, and Transit Company 5½'s at $15,022.50. There is included in the red column corresponding to these items I have just mentioned in the blue column C. M. D. 6's, $27,000, C. M. D. 5's, $58,000, and Transit Company 5½'s, $15,000.

The situation in 1929 is exactly the same as it was in 1928 except that there is included in the blue column C. M. D. 5's, $55,733, and in the red column, $56,000.

In 1930, the only item in the blue column is the Maine Company's investment in C. M. D. 5's, $48,703, and in the red column, $49,000.

By that time the Transit Company 5½'s had been paid off and also the Central Manufacturing District 6's.

In 1931, there is included in the blue column, Central Manufacturing District 5's owned by the Maine Company

at $46,693, and the corresponding figure for those bonds in the red column, included in the red column, is $47,000.

In 1932, there is included in the blue column as Central Manufacturing District bonds owned by the Maine Company, $40,667, and the corresponding amount in the red column is $41,000.

And in 1933, I think I have stated, that there is included in the blue column, Central Manufacturing District 5's owned by the Maine Company in the amount of $30,747, and the corresponding amount in the red column is $31,000.

The Member: Now, in the preparation of this chart you have undertaken consciously, have you, to eliminate all inter-company factors?

The Witness: That is correct.

The Member: One other thing: Does the blue column represent an exact and complete total of assets without regard and upon the assumption that all of the assets are to be used for the purposes of the red column?

The Witness: It does with some exceptions which I should tell Your Honor. In the case of operating companies, the accounts receivable have not been taken, and such items from the operating companies, the full amount of the cash and the full amount of their investment has been taken but not such items as accounts and notes receivable or inventories.

The Member: Now, that means, then, that to the extent that there is a divergence from fact in this chart, that divergence is to the effect that the blue column is not as high as it might be; is that correct?

The Witness: If you included the accounts and notes receivable of the operating companies and inventories, and also included their accounts and notes and ordinary items payable, there would be very little difference, both the accounts and the notes and inventories, the accounts and

notes receivable and inventories on the asset side, and the accounts and notes payable on the liability side have been left out on the theory that those are used in their ordinary business affairs.

The Member: Now, am I to take from that, and I am asking you only generally without any attempt to have you be entirely accurate about it—am I to take from that, that the inclusion in both of these columns, the red and the blue, in any one year of factors of receivables and inventories would not affect the correlative position of the two columns?

The Witness: Almost negligibly. I think I should state one further thing to Your Honor. I think it probably is covered by the fact that all inter-company items are eliminated. There is not included in the assets any shares of any of these constituent companies in the enterprise. That I considered an inter-company item. There has also been omitted from the assets such things as are subordinated such as the deposits in the Live Stock National Bank, and other items which it wasn't possible and which the testimony indicates it was not possible for the company to do anything with or to use.

The Member: Anything more from this witness?

You may stand aside. (Witness excused.)

Mr. Welch: Mr. Walker.

MR. ELISHA WALKER.

called as a witness by and on behalf of the Petitioner, and, having been first duly sworn, was examined and testified as follows:

Direct Examination.

Q. 1. (By Mr. Welch). Your full name, sir? *A.* Elisha Walker.

Q. 2. And where do you live, Mr. Walker? *A.* New York City.

Q. 3. Were you sworn just now? *A.* I was.

Q. 4. What do you do, Mr. Walker? *A.* I am an investment banker.

Q. 5. With what firm and holding what position with what firm? *A.* Partner in Kuhn, Loeb Company.

Q. 6. With offices where? *A.* 52 Williams Street, New York.

Q. 7. Now, Mr. Walker, will you be good enough to give us at least a thumbnail sketch of your life with particular emphasis on your experience in the financial and corporate world. *A.* I graduated from Yale University in 1900 with an A.B. degree. I then went to Massachusetts Institute of Technology, and studied mechanical engineering and naval architecture, and graduated in 1902 with a degree of B. S.

I then entered the employ of the firm of Fisk & Robinson, who were investment bankers, first being given a general course through the office, and then entering the department of what was known as "Examination and Reports." I was set to work quite promptly studying corporations, and at that time I remember making reports on the U. S. Shipbuilding Company, on the Buffalo & Susquehanna Iron Company, in Buffalo, and a couple of railroads, Gulf & Ship Island Railway, and the Louisiana & Arkansas Railroad.

In 1904 I entered the employ of William Solomon & Company, in their statistical department. In 1909 I became a partner in William Solomon & Company, which was also, I might say, in investment banking, an investment banking firm.

In the fall of 1919, I arranged for the combination of the firm of William Solomon & Company and Blair & Company, and I became president of the combined concern called Blair & Company, Inc. I remained as president of that concern until 1929, when I, well, worked out a consolida-

tion with the Bank of America in New York and the Bank of America then changed the name of their affiliate to Bancamerica Blair Corporation. I then became president of the Bancamerica Blair Corporation and chairman of the executive committee of the Bank of America itself.

Then in 1930, on February 15—well, I might insert there, first, that during the summer of 1929, after I had consolidated Blair with the Bancamerica, the Transamerican Corporation secured control of the Bank of America, and, consequently, of its affiliate, the Bancamerica Blair. So late that fall the question came up whether or not I should become chairman of Transamerican Corporation, which I finally undertook because I frankly did not like the idea of being head of a subsidiary controlled by another corporation.

Then I continued in that position for two years as chairman of the board, and the chief executive officer of Transamerican Corporation and consequently responsible for various affiliates, which included the Bank of America on the Coast which had deposits of over a billion dollars.

Q. 8. I didn't get that. *A.* Deposits of over a billion dollars.

Q. 9. When you said "Coast," which Coast? *A.* Pacific Coast, and also of the Bank of America in New York. And various other enterprises, including insurance companies, land companies, and a great mixture of assets.

During that period I had the unpleasant experience of having to write off a great amount of good will or whatever one might call it, to the extent of close to a billion dollars to reduce the assets to normalcy. The result was that in February 15, 1932, I withdrew from the corporation.

Subsequent to that, shortly after that, the partners of Kuhn, Loeb & Company asked me to join their firm as one of the senior partners, which I was happy to do, and from

that day—from the date of my joining, which was the first of January, 1933, until now I have been a partner of that firm.

I think that is briefly my history.

Q. 10. Just a word about what, if anything, you had to do with financing, studying reports, reorganizations, and anything of that sort during that period. *A.* Well, naturally, that has been my job really from the time I went into Wall Street, because I have been director of a great many corporations of both banks and industrial and also in the course of our regular business of financing, it has been necessary to study and work out plans of reorganization, and one thing or another.

Q. 11. Would you be good enough to tell us a few of the companies in which you have held directorships, some that we would be more apt to recognize than others, if you will. *A.* Well, in my bank directorship career, I started as director of the Columbia Trust Company, then the Irving Trust Company, the United States Mortgage & Trust Company, the Chase National Bank, and, of course, in addition, the Bank of America in New York and the Bank of America of California. Amongst industrial corporations, I might mention several oil companies, including the Pan-American Petroleum & Transport Company, Consolidated Oil, Tide-Water Associated Oil. Other industrials, I might mention concerns like Wilson & Company, the packers in Chicago, Armour & Company, also in the same business. I have been a director of the Brooklyn, Manhattan Transit Company.

I don't know whether you want any more. There are lots of smaller ones and maybe some others that I have omitted.

Q. 12. I think that is a nice list, sir.

In the course of your career had you any occasion to

examine into the requirements of companies for money for use in their business? A. Naturally.

Q. 13. Have you had occasion to examine dividend policies of various companies and pass on their soundness? A. Yes, both as director and in connection with financing of companies.

Q. 14. Have you at my request, Mr. Walker, examined the stipulation in the case which has been introduced here? A. Yes, I have.

Q. 15. Are you familiar with the chart, Exhibit 40, which I now show you, and which I will endeavor to put up in the form where it can be seen without putting it on the easel? A. Yes, I have been familiar with that chart in general.

Q. 16. Have you also examined and been instrumental in part in the preparation of the chart which I now point to, which is Petitioner's Exhibit 45? A. Yes, I have.

Q. 17. Have you examined the tax returns of the Petitioner in this case? A. I have.

Q. 18. Which are Exhibits 41 to 44, inclusive? A. I have looked them over.

Q. 19. Have you also read Mr. Reimers' testimony, who testified in this case? A. I have.

Mr. Welch: I offer the witness as an expert who will testify on the point as to whether or not the gains and profits of the Petitioner have been allowed to accumulate beyond the reasonable needs of its business, and I think I should add that in addition to opinion evidence, he will testify on one or two factual matters.

Mr. Clark: I have no objection as to the qualifications of this witness, Your Honor.

Mr. Welch: I don't at all wish it, but I wonder if before he starts his opinion Your Honor would like a recess or wait until we finish?

The Member: I don't care. Normally, I would recess somewhere around 25 minutes or 30 minutes after eleven.

Mr. Clark: I wonder—

The Member: Is this more convenient?

Mr. Clark: I wonder if we might recess now?

Mr. Welch: It might be somewhat more convenient.

The Member: All right. (There was a short recess taken.)

Q. 20. (By Mr. Welch). Mr. Walker, as a result of your examination and your study, have you an opinion as to whether or not the gains or profits of the Maine Company, this taxpayer, were, in the year 1930, permitted to accumulate beyond the reasonable needs of the business? *A.* I have an opinion.

Q. 21. What is your opinion, sir? *A.* That there was not an unreasonable accumulation of surplus or profit.

Q. 22. Have you similarly formed an opinion as to whether or not the gains or profits of this taxpayer were in the year 1932 permitted to accumulate beyond the reasonable needs of the business? *A.* I have; the same opinion.

Q. 23. And as to the year 1933? *A.* The same opinion.

Q. 24. Now, will you in your own way, Mr. Walker, tell us the basis for your opinion and the results that lead you to it. *A.* I naturally look at this problem from my own experience; that is, as a director and as an investment banker.

I look back and I see this company formed in 1911 with a million dollars capital and this contract with the Jersey Corporation.

Now there were two choices for the owner of the Maine Company to take: He could either cash in, take such dividends as he could draw out, and, possibly, leave a shell at the termination of the Jersey Company, which it has been testified as being 1940, or he could endeavor to build that

enterprise and at the end of 1940 have it in a position where it was soundly financed and in proper shape.

There is no question that the latter course was chosen because right in 1911 the Maine Company did offer bonds in exchange for the guaranteed New Jersey stock, so I think that was self-evident as to the policy.

Now by the end of 1911, as you can see from the chart and as I have worked out figures here—

Q. 25. May I interrupt? By the "chart" you mean this Exhibit 45? *A.* Yes, Exhibit 45.

—there was a difference of, roughly, $29,000,000 between the amount of what we might call the quick assets and the fixed liabilities. In other words, between the blue and the red lines.

In other words, it would have required the set-up, roughly —to keep, roughly, a million dollars a year because the Jersey Company had 29 years of life, so that looking at it from that viewpoint they had to save money.

By 1930 that difference has dropped down between the red and blue lines to about $12,000,000.

When I say "1930" I mean the beginning of 1930, because we are considering the four years 1933, inclusive, I take it.

Now that meant that they hadn't kept up to putting aside a million dollars a year and that by that time in order to accomplish the desired result they would have to increase that amortization, as you might call it, in order to take care of the fixed obligations of one kind or another, to, roughly, a million two hundred thousand dollars a year provided, of course, that earnings were to continue normally and nothing unforeseen was to happen.

On the other hand, we all know that unfortunately since 1929 things haven't been quite so rosy and we have had some very difficult times.

Then the question one might probably raise would be cash

versus securities; whether or not it was wise to accumulate as much cash as this corporation has accumulated, or whether they should have bought securities.

I think there could very well be a good difference of opinion on that line but from the object that was to be obtained here it really didn't make any material difference whether that money was invested in securities or cash.

Q. 26. Could I interrupt? By "securities" I take it you mean the securities of the Jersey Company rather than general securities. A. I mean the securities of the Jersey Company and its subsidiaries. Now, there was a certain amount of investment, which, all told, ran into a fair figure, first in the common stock of the Jersey Company; to a lesser extent in the preferred stock, and of course in the bonds of the Maine Company; quite some purchasing; but when we look at 1930 I think almost any one would have said, "Let us keep our cash," and the same in 1932 and 1933. I know, well, those were very trying years. I know the position I happened to have been in in 1930, there, in charge of two very important banks, and I can assure you it was a very trying time; deposits fading away and people very much worried, so I think perhaps the management can be congratulated rather than otherwise for having had the judgment to hold cash during those particular years. Maybe I wouldn't have been quite as wise, in other years. I might have invested a little more money in securities, but when I think of the particular years in question I think probably it was the wisest policy to retain as much cash as possible.

I might also raise the question, "Why hold on to so much cash as against trusting to refinancing, in 1940?"

Well, I have given a good deal of thought to that question, and, frankly, not alone in 1930 to 1933, but even to this very day I think the problem of refinancing this proposition in 1940 would be a very serious one.

What have you got to finance on? If the Jersey Company were kept alive you have got a holding company on top of a holding company which is very unpopular and against the trend of the times, even if you could eliminate one of the holding companies and having a holding company just owning the stock of these subsidiaries, the Transit Company and Railway Company and Central Manufacturing District and Produce Terminal; you have still got nothing but a common collateral trust.

You can't finance on the underlying company; the Transit Company is under I. C. C. They certainly are not going to allow you to put a big bond issue or other security issue on the Transit Company and then have an upstream loan. Upstream loans in some States are illegal. Any way, they are considered, generally, improper.

The same thing applies to the Railway Company and the Produce Terminal Company, while that is not under I. C. C., is under the Illinois Public Service Commission, and that company would find itself up against the same situation of an upstream loan which I feel very confident the Commission would not permit, so the only other one you have got that doesn't come under commissions is the Central Manufacturing District, and I don't think it takes a great deal of argument to see that that company couldn't do an awful lot of financing; a real estate corporation. It has got enough bonds on it right now, so that you get back "What have you got to finance?" and, honestly, in my opinion it is a very serious question for anything but some maybe very minor amount and you might raise enough money for a working capital, or something like that, but it would be a minor amount.

I have explained, in general, my views on the situation.

The Member: May I ask you whether it is true or not that in the financial world with which you are familiar that

in 1930 and thereafter there was a greater regard for the holding of cash for financing than there had been in years prior to that; is that true or isn't it?

The Witness: That is true.

I mean—

The Member: Is it true or is it not true that that regard for cash became increasingly greater after 1929, let us say, so that there was a greater and greater feeling of the desirability of having cash? Is that true?

The Witness: That is true.

The Member: So that in 1933 it was thought more desirable to have cash than it had been in 1930?

The Witness: People were so—

The Member: And that has been progressively so, even to today; is that a fact?

The Witness: I wouldn't say progressively so even to today because I think we went through a period there at the time of the closing of the banks and the devaluation of the dollar, and so forth, where everybody was holding on to their cash in real fear, you might say. I think that, to quite an extent, has passed. I think that people still think awfully well of cash and like to hold onto it but not to quite the extremes of the years, particularly 1932 and 1933.

The Member: Is it, today, more respectable to have cash than it was prior to 1929?

The Witness: I don't know as I quite understand the "respectable" part.

The Member: I am talking about respect for the judgment; that is what I mean. I am not speaking, morally, respectability, but I mean to say is it today regarded, more favorably regarded as good financing to have cash than it was prior to 1929? Does cash hold a better position, that is what I mean?

The Witness: Yes; somewhat more so.

The whole mental attitude prior to 1929 was that things were on the upgrade and the famous new era was talked of and people invested much more freely than they invest today. There is no question about that, but, on the other hand, I think that there is more investment today and a little less holding of cash than there was in a period from the break of 1929 until after the banks had reopened and gradually started to build back, in 1933, 1934, and 1935. In there there was a certain regaining of confidence.

The Member: Can you locate that in time a little more specifically? That is to say, beginning in 1929 and coming right down to date, can you be more specific as to the progress of the thought about holding cash?

The Witness: Well, I would say that the desire to hold cash kept on the increase, certainly from the end—well, let us say from the beginning of 1930, because at the beginning of 1930 there was a slight upward swing which made people feel a little more optimistic, but, let us say, from the beginning of 1930 right through 1933, when we really reached sort of bottom in that sentiment—I suppose that is hard for me to say, just when sentiment on the whole improved, but it was sort of dragging along bottom, there for a couple of years, and then, we will say, the sentiment has improved since then.

Does that give you my general views?

The Member: Yes.

The Witness: All right.

A. (Continuing) I was going to say that then I looked at this picture from a consolidated earning viewpoint. In other words, I didn't think it was sufficient just to take the earnings of the Maine Company alone because, after all, this is really one enterprise and if I had been a director of the Maine Company I would want to see how the whole

picture stood, so I took the earnings of 1930 and found out that the consolidated net income of 1930 was $3,697,070.60.

Included in that earning power were the earnings of the Central Manufacturing District, which was never able to pay out money, but which, rather, was requiring money all the time, so I deducted those earnings of $289,403.32 and left a possible combined earnings of the enterprise of $3,407,667.28.

I might mention that if I remember correctly, the Central Manufacturing District in that year had to be provided with a million dollars in order to pay off maturing obligations, so that, certainly, none of their cash was available.

Now in that year, also, there were non-recurring profits on securities which the Maine Company held of $614,047.21. That figure I got from the income tax statement; not a normal recurring profit of the corporation of the enterprise which left $2,793,620.07.

Then again, the bank troubles, you see, were wholly on the horizon, and the Maine Company had to make a subscription to the Stock Yards Bank of some $464,000 of stock and took up from an affiliate of the Stock Yards Bank a hundred thousand dollars of frozen bonds, a total of $564,000. That would reduce the ready cash to $2,229,620.07.

From this the preferred dividend on the Jersey Company stock was paid of $387,339 and common dividend to minority holders of $55,689.75, a total of $443,028.75, which would leave a balance of $1,786,591.32.

Now from that later figure, as shown by these charts, from the beginning of 1930 for that 10 years there was still $12,000,000, which it was certainly advisable to accumulate or set up, a so-called amortization charge of $1,200,000 a year. They hadn't been able to even live up to a million,

but if the earnings continued all right they would have to get a million two if they were to keep the picture.

If you take off that amortization charge you would show earnings of the consolidated net income of $586,591.32 as *against the dividend that was paid of some $400,000.*

Of course I can't help but feel that any director with that picture confronting himself would have said this $400,000 was a very fair dividend to pay at the end of 1930, knowing conditions as they existed at that time.

Now I worked up similar figures for 1932 and 1933. The 1932 consolidated net income was $4,082,105.36 from which I deducted the earnings of the Central Manufacturing District, as before, of $207,492.82, leaving a balance of $3,874,612.54.

Now during that year the Maine Company had to put deposits into the Stock Yards Bank which almost immediately became frozen, of $3,071,779.19, which left available cash of $802,833.35.

If you deduct from this the preferred dividend on the Jersey stock for that year of $381,600 and deduct the common dividend on the minority stock of $47,387.25, or a total of the two of $428,987.25, leaves you a balance of $373,846.10.

Now that is not even the amount of the common dividend that was paid.

In those figures no allowance is made for the amortization, as I call it, of the $1,200,000 a year, and on top of that I might say that of the consolidated net income of $4,082,000, about $2,000,000 of it was profit from former years which just happened to come into this year of money that had been impounded in previous years, so, certainly, 1932 was a pretty sad looking year from an earnings standpoint, if you are going to look at it from the dividend viewpoint.

1933, unfortunately, was still sadder. The consolidated

income was in the red $84,165.79. That included the earnings of the Central Manufacturing District which were $237,932.62.

As those earnings weren't available, the company was really short that year of $322,098.41 before the payment of the Jersey preferred dividend. If you deduct the Jersey preferred dividend of $379,998 and the dividend to the minority common stockholders of $45,414, that is a total of $425,412, you have a red figure of $747,510.41 with nothing, of course, available than those figures, either for dividend on the common or for the so-called amortization that I talked of of a million two, and, as I remember it, in 1933 also they had to pour, really, millions into the banks on top of that, so that the cash situation from the earning viewpoint was not particularly pretty.

Fortunately, the company was in the cash position where it was able to take care of these banks and I have said to Mr. Prince I took off my hat to him for being so conservative to have the cash so that he could take care of the bank, but I think that about tells the story, the way I would look at this picture, as a director or an investment banker.

Q. 27. (By Mr. Welch). One other thing that I think your views might be of some help to us on, and that is on your judgment as to whether or not the Jersey Company should be liquidated in 1940. *A.* I feel very definitely it should be. That is, it is the spirit of the times of having holding companies on top of holding companies, but it is an unpopular form of finance, and, any structure today, better from the credit viewpoint.

Q. 28. Have you had occasion, Mr. Walker, to discuss with Mr. Prince what he was doing in the Maine Company and his reasons for doing it at any time? *A.* Yes.

Q. 29. On what occasion, sir, and what years? *A.* Well, on and off, I suppose, the last 10 years.

Q. 30. Will you tell His Honor what, if anything, Mr. Prince has said to you about what his plans were? *A.* Well, there is no question that his plan was to liquidate the Jersey Company. He has told me many times that his theory was to get rid of the intermediate company, that he wanted to hold onto cash, particularly in the last seven or eight years, because he was very fearful—frankly, I felt he was too blue on that point—but he said, "No, I am going to hold onto cash, and I am going to keep cash as near as I can in one pocket, because then I am going to know where that cash is." He was always worried about the possibility of bank trouble, and he was just going to keep his cash in as strong a bank as he knew how to keep it and be conservative, indeed, in the extreme.

Q. 31. Did Mr. Prince ever say anything to you about his ambition in respect to the company, how he wished to leave it? *A.* He wanted to leave it as an empire, is the way he expressed it to me, and he said, "I don't want this thing torn down at my death; I want to have this—I have worked all of these years of my life to build up this monument or empire, and I want it to be in A-1 condition and survive, at least, through another generation."

Mr. Welch: You may inquire, Mr. Clark.

Mr. Clark: Just a moment, Your Honor. (Counsel for Respondent confer.)

Mr. Clark: I am sorry to take this time, Your Honor, but it is very difficult for me at this point.

Cross-Examination.

X-Q. 32. (By Mr. Clark): Mr. Walker, in the record there is an allegation that the Maine Company must retire or pay off the obligations of the New Jersey Company and its subsidiaries by the year 1940. Is that your understanding of the situation? *A.* There is no compulsion, but

there are maturities which the board of directors would have to take into consideration in their financial dividend policy.

X-Q. 33. But it is your understanding and the result of your investigation that there is no compulsion on the Maine Company to retire those obligations? *A.* No. As I said, the directors of the Maine Company could have chosen the course of paying everything out and having nothing left at the maturity, which, in my opinion, would have been most unwise and unsound.

X-Q. 34. Have you considered what has been referred to as the contract of 1914, which I believe is Exhibit S-46 attached to the stipulation? *A.* Yes. I have considered that.

X-Q. 35. And what is the result of your consideration relative to that?

Mr. Welch: Oh, that is an odd question. The result might have been that he had a red face or a headache, or anything else.

Mr. Clark: That is right, too, and let the witness answer if he can't understand the question.

Mr. Welch: I object to the question. I think it is too broad. I don't understand it.

The Member: I will sustain the objection.

X-Q. 36. (By Mr. Clark). Have you taken into consideration the question whether or not Mr. Prince or F. H. Prince & Company, Inc., had any interest or any obligation to see that these New Jersey Company bonds are met or that some method of refinancing or reorganizing is effected in 1940? *A.* Yes; I have given consideration to that. I think they had a decided interest to see that this maturity was met.

X-Q. 37. No obligation but an interest? *A.* Whether or not the Maine Company had an obligation, I am not lawyer enough to say, but I could conceive that the directors of the Maine Company might have found themselves in a very awkward situation if they had taken the extreme means of pay-

ing out everything and leaving a shell. I think they would have found stock owners', preferred stockholders' suits and even bondholders' suits, and what not.

X-Q. 38. My query related to Mr. Prince or F. H. Prince & Company, Inc., and not the Maine Company. A. Well, Mr. Prince, I imagine, was a director of the Maine Company. That is the reason I mention that, that he would be the principal source of attack, probably.

X-Q. 39. Do you know as a result of your investigation in connection with the preparation for testifying here or from any other source how Mr. Prince was investing his personal funds during this period from 1930 to 1933? A. I know very little, if anything, about his personal investments. I never did any investing for him.

X-Q. 40. You wouldn't know whether he invested a million or two million dollars or some other similar sums in stocks or securities during this period? A. I know nothing about his private business.

X-Q. 41. Do you have before you this chart, which is Exhibit 45? A. Yes, I have.

X-Q. 42. Will you please refer to it for a moment, Mr. Walker? A. Yes.

X-Q. 43. Now, referring particularly to the year 1919, if you were faced with a situation as appears on the chart as of that year, would you have increased your holdings in the common stock year after year and during the subsequent years have loaned millions to the stockholders or the stockholder?

Mr. Welch: Objection. That is a double-headed question. That had better be split.

Mr. Clark: Well, I will split it.

X-Q. 44. (By Mr. Clark). Faced with the situation as appears from the chart in the year 1919, would you have in-

creased your holdings in the common stock of New Jersey Company year after year? A. Yes, I would have.

X-Q. 45. And why? A. From the viewpoint of the Maine Company it was most important to get that ownership so as to have, if possible, complete ownership at least by the end of the charter. Otherwise, the whole proposition would have been broken up into various parts in 1940 to a lot of minority stockholders.

X-Q. 46. Do you know whether or not in the years subsequent to 1919, or let me ask you this:—strike that, Mr. Reporter.

Do you know who the stockholder was of the Maine Company in the years subsequent to 1919? A. I don't know, but I presume that Mr. Prince was.

X-Q. 47. Do you know whether or not Mr. Prince during those years borrowed money from the Maine Company?

The Member: From the Maine Company?

Mr. Clark: Yes. A. Why, the records show that in certain years—I haven't the records before me—that Mr. Prince did borrow certain money.

X-Q. 48. (By Mr. Clark): Have you considered that fact? A. In my report here?

X-Q. 49. Yes. A. Yes.

X-Q. 50. Do you think that was a sound policy? A. I think it was a very natural and sound policy because Mr. Prince was a man of wealth and his note was good. He could borrow, I am sure, at the banks if he didn't borrow from his corporation, and probably saved interest for the corporation by borrowing it rather than just leaving the money on deposit.

X-Q. 51. Of course your career in Wall Street has been very extensive, Mr. Walker, as you have testified, and I appreciate it. During that career have you at any time known a corporation which had as large assets and earn-

ing power as the Maine Company which could not in normal times refund its maturing obligations? A. Well, I have known of plenty of companies that have had great difficulty in refunding obligations.

X-Q. 52. That is—pardon me. A. It depends on what you mean by normal times. It depends what the original financing of the company was. I mean, there are plenty of companies that have been just put together without banking support and issued a lot of securities which have certainly been unable to be refinanced at the maturity of those securities.

X-Q. 53. Well, this company you consider to be in a very sound condition, wouldn't you, during the period 1930 to 1933? A. In that particular period this company was sound.

X-Q. 54. Well, has there been any period in which it wasn't sound in your opinion? A. I don't think it was so sound when it started out, no.

X-Q. 55. When was that? A. 1911. It guaranteed and only had a million dollars in the treasury. I wouldn't call that sound.

X-Q. 56. When do you think it became sound? A. I haven't pretended to study just what year, but you have asked me specifically. It became—it got into a period of soundness when its income was materially increased from the New York Central lease. That is really when it—

X-Q. 57. Do you remember when that was? A. Well, what is that? I think it was 1923. I am not sure.

X-Q. 58. Can you tell me, Mr. Walker, what rate of interest large industrial companies of large and relatively stable earning power have been obliged to pay on bond issues sold by the firm of which you are a partner during the last year or two? A. Well, it varies plenty on the maturity and character of the borrower. Loans from one to five years

of outstanding companies have been made, say, at an average rate of, oh, around 2½ percent by the banks. Ten-year loans, I suppose, have been made, with the very best credits, at an average of 3 percent. Your very top companies have done even better on some of their longer term securities. I mean, maybe even 2¾ percent on a ten, or even in exceptional cases 15-year maturity. But that market is twofold, one for the longer term ones, it is the insurance companies, and for the shorter term ones, it is the banks.

Now, of course, the insurance companies are a very special character of buyer, and we are unfortunately in a market where the top companies which the insurance companies can and will buy the securities of command tremendously high credit. On the other hand, if you get out of that class, it is a very difficult problem today, very difficult. The investor has very little money to invest. If he has it, he either seeks tax exempts or withholds because of lack of money really to invest. Money has gone primarily into the banks and insurance companies.

Does that cover your question, Mr. Clark?

X-Q. 59. I think so, Mr. Walker.

Now, in this regard, have you given any consideration to refinancing the Railway Company on which there was a net income—no, I will strike that last.

—on which there was a net income to refinancing the Railway Company? *A.* I thought of the Railway Company.

X-Q. 60. What was your thought relative thereto? *A.* Well, you can't consider refinancing the Railway Company for a large amount and having that sum of money pass up through upstream loans to the parent corporation, because it just wouldn't be permitted by the I. C. C. or by, I am afraid, even by law.

The Member: Even by what?

The Witness: By law.

X-Q. 61: (By Mr. Clark). You recall the terms of the New York Central lease? *A.* Yes, in general.

X-Q. 62. And the amount of income which came from that lease? *A.* Yes.

X-Q. 63. And that was how much? *A.* Two million dollars a year.

X-Q. 64. You have taken that into consideration in arriving at the answer which you have just given? *A.* Yes, from the Railway Company. You asked me about financing the Railway Company.

X-Q. 65. That is right. Have you taken into consideration whether or not the New Jersey Company could sell or borrow on its stock of the Railway Company? *A.* I have taken that into consideration, yes.

X-Q. 66. What is your conclusion in that regard? *A.* If you keep the Jersey Company alive which, No. 1, I think is inadvisable, but subject to keeping it alive so you could use the credit of the Jersey Company to borrow on what is really the revenue of this $2,000,000 lease—I take it that is in effect what you mean, Mr. Clark?

X-Q. 67. Yes. *A.* You might arrange a short-term loan at banks for a reasonable amount, which would be refunded—or, not refunded, amortized very quickly. I think every one realizes that the New York Central's credit unfortunately since 1929 has not been of the best, and there has always been some question raised—I know I have raised the question many times in my own mind during the past six or seven years, whether or not that lease was really a good lease, whether it could continue. I have often spoken to Mr. Prince myself about it, because I had a little concern as to how it might affect him in case that lease should fall due to receivership or otherwise. So you haven't got their first class collateral. You have got a dubious class of collateral, and I don't think you could sell a bond to the public at a

satisfactory rate. I am sure you couldn't sell it to an insurance company. But I do think in an emergency if you had to borrow a reasonable amount of money at a bank payable over one, two, three years with the general credit of the Jersey Company attached to it, that you could borrow a certain amount of money in time of need.

X-Q. 68. Do you know whether or not Mr. Prince was concerned as to whether that lease might fall through as a result of receivership or some other reason? A. Mr. Prince was always an optimist. He always saw the bright side as far as his own company was concerned, and he would always take the attitude with me that, oh, if they don't want it, others will take it. But, personally, I know that in life—

X-Q. 69. No, I have only asked you—

Mr. Welch: He hasn't finished his answer.

Mr. Clark: Not any statement as to what he personally knew. I just asked him if he knew what Mr. Prince's attitude was.

Mr. Welch: I beg your pardon. My associate says that he has answered it.

The Member: I just want to have you go one step further about this matter of borrowing on the lease. As I understood you, you said that you could borrow a certain amount of money on that lease. What can you say in respect to the period of time for which you could borrow on the basis of that lease? Would it be just a short-term loan or could you refinance it for any substantial length of time?

The Witness: I don't think you could for a substantial length of time. By "short term" my offhand thought was that, say, suppose you needed $5,000,000, for example, and in a pinch, and you went to the bank and said—let's figure, for example, we are in 1940. Perhaps I can explain it better. And suppose between now and 1940 for some reason

or other the Maine Company needed $5,000,000 to provide a balance of moneys that might be necessary to pay off these securities and to give it additional working capital, because you will note in my figures I have only allowed for all moneys to be paid out. I haven't left any moneys for working capital. So suppose they needed $5,000,000. I think it probably could go to the banks with that lease, if conditions are no worse than they are today, as an obligation of the Jersey Company and maybe get one, two, three millions in money, something like that, that you would, say, pay off a million and a half or so each year, something of that nature. That plus the other assets of the Jersey Company. That is my offhand opinion as to the value of that lease.

The Member: Well, I take it by that you mean more or less emergency financing?

The Witness: More or less. Of course, when I say "emergency" I don't mean emergency in the sense of times being terrible, but I mean the fact that the company didn't have quite enough money to meet its obligations plus additional working capital which the corporation would need. I can well see even today that in 1940 this corporation may need to borrow—that is, this enterprise as a whole may need to borrow a certain amount of money to provide itself with proper working capital after paying all these subsidiary obligations and stocks, and so forth.

The Member: Well, changing the word "emergency," in order to think about borrowing money upon this, you, I notice, are setting up an imaginary particular occasion.

The Witness: Yes.

The Member: Now, I want to know whether this could be used as the basis of more permanent or established financing over a period of time rather than the mere means of

providing funds to finance a particular occasion whether it be emergency or not. Do you get my thought?

The Witness: I get your point, Your Honor.

The Member: There may not be any sense in it.

The Witness: No, I get your point, Your Honor. But I think we must define then whether the Jersey Company is to continue to exist or not. In other words, just what collateral am I going to have to offer for financing if I had to finance it? Will I consider the Jersey Company as still alive with an extended charter, or will I take the Maine Company with the Jersey Company out? I don't want to make a hypothesis and then find that I am wrong. Which would you prefer?

The Member: Well, I don't care. I am trying to learn what is your mode of thought and what are the considerations which you think must be given place in the thought of refinancing or financing on the basis of this lease. I want to get elucidation from you, and that is all I care about, and if you have got to take it on two alternative bases, that is all right, and, as far as I am concerned, you have said all you need to say.

The Witness: Well, on that, all I could add is that my mind has worked along always on the theory that the Jersey Company would cease to exist in 1940 because that has been so often told to me by Mr. Prince, that he wanted to get rid of it, so I have taken it for granted that the Jersey Company would not be—would be non-existent when the time came for the payment of these obligations, and, naturally, the one thought would come to my mind, and that is, well, suppose the Maine Company then needs additional money? How much can it get? How could it finance it?

No. 1; it must be based on normal times, no war, no panic, which none of us could say today might not exist. But if the times were normal in 1940, the Jersey Company

wiped out, the Maine Company then owning directly the stock of these principal subsidiaries including the Railway Company, including the Transit Company, the C. M. D., and the Produce Terminal with earnings approximating the present-day earnings, I think it would be possible to finance a reasonable amount. It is hard to say just how much, but everything normal it might be financed ten millions, maybe even slightly more, but as to rate, the rate that would have to be paid, as to whether or not those securities would have to be made convertible into something, in other words, have an attraction over and above the ordinary interest rate, I think it would be necessary in this type of securities—it is not a security that an insurance company would buy at all; it is not a security when you talk about long-term securities that the banks will buy; it must be sold to the investor—it would be a very difficult job and have to pay a very good rate of interest, and none of these rates that I have been talking about of 3 percent, or nothing like that. I mean, it would certainly be in the five or six percent class, and would have to have a real attractive kick, as we call it, in Wall Street attached to it. But those are all hypothetical, and I don't think, frankly, one would be justified in running too great a risk as to whether or not that could be done, because it is bad enough to look forward from day to day rather than from year to year nowadays.

Mr. Clark: One moment, if Your Honor please. (Counsel for Respondent confer.)

Mr. Welch: If Your Honor please, the cross-examination ended once. This is quite all right except I know Mr. Walker has important engagements in New York and I hope we can finish before adjourning.

Mr. Clark: I hadn't realized it was ended, but I shall have only a little more, just a moment or two.

X-Q. 70. (By Mr. Clark). Referring to Exhibit S-46 relative to which you have already testified, the lease—I am wrong, apparently, in referring to it as S-46, it is Petitioner's Exhibit 2. That is the lease of 1922 between the Chicago River and Indiana Railroad Company and what is referred to as the Railway Company, here. A. Yes.

X-Q. 71. In which the New York Central is grantor. Have you familiarized yourself with the earnings of the Chicago River and Indiana Railroad Company? A. No; I have only been familiar with the earnings of the New York Central.

Mr. Clark: That is all.

Mr. Welch: That is all, Mr. Walker. Thank you. (Witness excused.)

Mr. Welch: These are quite happy words for me, Your Honor: They are, I rest; the Petitioner rests.

The Member: We will suspend, then, until 2 o'clock.

Mr. Clark: May we not suspend until quarter past two, Your Honor?

The Member: All right, we will suspend until 2:15.

(Whereupon, at 12:40 o'clock p. m., the hearing was recessed until 2:15 o'clock p. m. of the same day.)

Afternoon Session.

The Division resumed hearings at 2:15 o'clock p. m. whereupon the following proceedings were had:

Mr. Clark: If Your Honor please, the time has come for the Respondent to put on its case.

I am in this situation, which I have discussed with Counsel for the Petitioner: The witness whom I expected to put on first is still out of town and in Chicago. Now, I can't offer any reason therefor and if there is an objection I will have to go ahead as things are.

However, we only have a couple of hours this afternoon.

We will have to go into next week, anyway, as I understand, for if is my understanding, if it is correct, that Your Honor is not going to sit tomorrow?

The Member: That is correct.

Mr. Clark: And I understand that there is no objection on the part of the Petitioner to our going over until Monday, with the understanding that we will put in quite a bit of evidence which we have here, documentary evidence, this afternoon.

I don't know how long that may take.

Am I correct, Mr. Welch, in what I have said?

Mr. Welch: Of course, nobody on this side of the bench can guide our conduct, but I am free to say that I am somewhat tired.

It is my guess we will use a good deal of the afternoon in regard to what is being offered, and I can only state that I am enthusiastically in favor of your motion, Mr. Clark, but I know that it finally rests with His Honor.

The Member: I take it there isn't any occasion for me to say anything, now. You have got some evidence to carry along with and it may be at that time it would seem to be convenient to suspend over the week end there will be occasion for me to say something, and when it does I am not going to be insistent about going ahead, but as long as you are going ahead for the moment there is nothing for me to do now but to hear what you have to present.

If you want an assurance I am not going to be insistent I can give you that assurance. I am not going to be unreasonable. Whether it is unreasonable or not, I will tell you when it comes time to decide.

Evidence on Behalf of the Respondent.

Thereupon, the Respondent, to maintain the material averments on his behalf, introduced the following proof:

Mr. Pierson: If Your Honor please, in the presentation of the Respondent's part of the case, I offer in evidence at this time a series of sheets of paper which are Mr. Green's notes and upon which he has constructed his figures regarding the Petitioner's Exhibit 45 which was introduced in evidence this morning.

I understand there is no objection to that.

Mr. Welch: I think it is only fair they should go in evidence.

The Member: They will be received.

Mr. Pierson: I am advised by my associate that there are 23 sheets.

The Member: That is the original, is it?

Mr. Pierson: No, it is not, Your Honor. I notice it is a copy.

The Member: Is the original available?

Mr. Green: I can't, for the life of me, locate it, Your Honor. I don't know where it is. I have a carbon copy myself and this is another one.

Mr. Pierson: I might state it is very legible.

Mr. Green: It is on heavy paper; it is not on onion skin paper.

The Member: Off the record.

(There was a discussion off the record.)

The Member: On the record.

(The documents so offered and received in evidence were marked "Respondent's Exhibit C," and made a part of this record.)

Mr. Pierson: I now offer in evidence seven sheets consisting of the revised balance sheets on the basis of the stipulated adjustments. Those balance sheets covering the years 1929, 1930, 1931, 1932, and 1933.

Mr. Welch: Could I ask, Mr. Pierson, if they have been examined by Mr. Keelan or Mr. Green?

Mr. Pierson: I understand they have, Mr. Welch. I offer those at this time.

Mr. Welch: There is no objection.

Mr. Green: What dates are those?

Mr. Pierson: Ending December 31, 1929, 1930, 1931, 1932, and 1933, consisting of seven sheets.

Mr. Welch: Mr. Pierson, are you in a position to give us copies of those?

Mr. Pierson: We will have copies made of those, Mr. Welch.

Mr. Welch: Thank you. So that we may have them over the week end, if there is any interest in them?

Mr. Pierson: We will attempt to.

The Member: Will you read that offer?

(Statement read as follows:

"I now offer in evidence seven sheets consisting of the revised balance sheets on the basis of the stipulated adjustments. Those balance sheets covering the years, 1929, 1930, 1931, 1932, and 1933.")

Mr. Pierson: If Your Honor desires, I will state the companies that that covers.

The Member: No, I was just wondering whether the offer indicated who made them or how they came into being. If there isn't any question about them, all right.

(The documents so offered and received in evidence were marked "Respondent's Exhibit D," and made a part of this record.)

Mr. Pierson: I offer in evidence a summary of the differences in the taxes paid by F. H. Prince and F. H. Prince & Company, Inc., and the taxes which have been due and payable if the Petitioner, the Chicago Stock Yards Company, has distributed its annual profits for each of the years 1930, 1932, and 1933.

The Member: All of its annual profits?

Mr. Pierson: That is correct, Your Honor.

Mr. Welch: It is going to be offered?

Mr. Pierson: No, there is another offer to go along with that.

Also the summary of the differences in the taxes paid by F. H. Prince and the Frederick Henry Prince trust and the taxes which would have been due and payable if the Petitioner, the Chicago Stock Yards Company, had distributed its annual profits for each of the years 1930, 1932, and 1933.

Mr. Welch: To those offers, I object. You said there were going to be two offers? I understood—

The Member: I think they had better be offered separately, in any event. They involve different things, apparently.

You are offering the first two things that you mentioned?

Mr. Pierson: That is correct, Your Honor.

The Member: You have an objection?

Mr. Welch: I object.

The Member: What is it?

Mr. Welch: I am advised by my associates that the arithmetic is correct. The objection is based on this ground: The computation is offered on the assumption that every cent of profits should have been distributed. I don't know what the testimony is going to be, but I can scarcely imagine that there will be testimony to support that theory. Secondly, the most that could be said for these figures is this: That if every cent of the profits of the Maine Company had been distributed, Mr. Prince's gross income would have been increased by that amount. Certainly, there is no telling what he might have done in the way of taking losses to offset his income had that happened. So the thing seems to me so speculative at both ends that no good purpose is served by having it put in evidence with all the dignity of an exhibit. If my brother wishes to construct such

figures in a brief and argue about them, that is one thing, but I object to their admissibility in evidence.

There is a third reason that I want to call to Your Honor's attention, and that is this: It would be easier for me to talk about my objection if Your Honor looked at the sheet that is being offered, and there is not the slightest objection on my part to your doing so.

(A paperwriting was handed to the Member.)

Mr. Welch: If Your Honor will look at the second column "Difference of H. Prince & Company, Inc.," you will find that on some theory my brothers have inserted rather huge figures there. I judge that it is based on the assumption that a personal holding company—well, I am only guessing at the theory. Perhaps the theory is that again there were accumulations in that company and a tax imposed. In any event, so far as I can see, the only tax that should have been imposed is the one in the third column, and I could see no understandable basis for these rather huge sums that appear in the second column.

The Member: I notice that the exhibit, proposed exhibit, is called a summary of the differences in taxes paid and the taxes which would have been due and payable. Now, that imports so much of law that I think the exhibit is clearly inadmissible in so far as it does purport to include a statement of a hypothetical legal liability imported by the terms "Due and Payable" without a very complete statement of the basis upon which that appears. In other words, the exhibit is either worth something or nothing. It is worth nothing until there is a complete elucidation of everything upon which it is based. I take it, furthermore, that the returns of F. H. Prince and of F. H. Prince & Company, Inc., are not in evidence, are they?

Mr. Pierson: No, Your Honor, but they will be placed in evidence.

The Member: I should think that the most you could do —perhaps not the most, but I should think what you might do is to take the returns of those two individuals, which must be in evidence if they are to be taken, and then I should think that you could introduce in evidence a computation of the tax figure which would be substituted if the gross income shown on each of those returns were to be increased by a pro rata distribution of the Petitioner's entire earnings and profits, because that is merely a mathematical figure. You have got "X" on the return, and if you have "X" plus "Y" the tax would be so and so as computed by any income tax auditor in the Income Tax Unit. I shouldn't think there could be any objection to that. If this proposes to include all of the meaning of the words "due and payable," I should think you would have to exclude it.

Mr. Pierson: Well, if Your Honor please, in connection with that offer, we have had prepared a computated detail upon which those differences are based.

The Member: Well, then, perhaps you had better proceed the other way around. Let's see piece by piece what your structure is, and when we come to the ultimate summary it may be that you can establish its admissibility. I don't know.

Mr. Pierson: In connection with the summary contained in the first column, the differences on the taxes of F. H. Prince, I have a computation of the net income reported on the return less the office adjustments and other items of income adjusted by audit, to which is added the distributable income of the Chicago Stock Yards Company. And in connection with the distributable income, there is a schedule thereto attached which shows the computation of that distributable income, which goes to make up the summary that is referred to in the first column. And in

connection with that it gives credit for the taxes which have been previously assessed on the return, leaving the net difference, which is referred to in the first column. And that has likewise been done, Your Honor, with regard to the computation as the Respondent has computed it with regard to F. H. Prince & Company, Inc.

The Member: Has your adversary seen that?

Mr. Pierson: Yes, that has been checked by Mr. Keelan.

The Member: Have you any objection to that?

Mr. Welch: As to the arithmetic, I am advised by Mr. Keelan it is correct. I still have this difficulty, if Your Honor please—

The Member: The arithmetic doesn't mean very much. If you simply mean by arithmetic, the addition of one sum to another and the sum to be derived from it, that is arithmetic, if that is all you mean the extent to which you are willing to admit it.

Mr. Welch: That, of course, I agree to, but I still have this difficulty that I have pointed out. These computations bother me on this ground: That we go through this formal business of asserting that someone's tax would be so much larger if his gross income would be increased by so much, and that is unsatisfactory. If we went back to that year and Mr. Prince took this additional income, nobody knows what he might have done by way of sales for losses, or anything of that sort.

The Member: But that is always true of mathematics. You have got to act on certain assumptions, and, as I understand it, the assumption here is that everything else would be exactly the same except—everything would be exactly the same except the gross income. Now, there is no harm in putting mathematical calculations into the record which shows that if his gross income was "X" his tax will be thus and so, and if his gross income was "X" plus three, his

tax will be thus and so. Now, that is as far as I understand this goes, isn't it, Mr. Pierson?

Mr. Pierson: That is correct, Your Honor.

The Member: So if that is the only objection you have, I will overrule that objection and receive the exhibit.

Mr. Welch: Now, that disposes only of the first column. It doesn't dispose of the second column of the offer. I should like to understand better than I do at the moment how the second column is arrived at and on what theory.

The Member: If there is any doubt about that, it must be done in the orthodox way. It doesn't make any difference what counsel at the table say about an exhibit because what they say is not evidence. If there is any doubt about the authenticity of the figures which are used, in the first place, because the return is not in evidence, or something of that sort, we must have a witness who will state the factual bases upon which the exhibit is constructed and submit himself for cross-examination. If, however, there is a disposition on the part of counsel to make an agreed statement of facts which can be obtained as assumed or imported into this exhibit, why, that is entirely a matter for you to do. I mean, you can't do it this way by not putting a witness on the stand and then arguing about whether the exhibit is to go in.

Mr. Pierson: I understand that, Your Honor. Of course I have been advised by my associate who did the auditing work on this, that he had conferred with Mr. Keelan in that regard, and that this was, so far as that phase of it was concerned, an agreement as between the parties.

The Member: Yes, but the man whose agreement you want to get is Mr. Welch, because this has got to come up to a peak where the responsible counsel is the one to talk, and I am discussing now the objection which Mr. Welch

has made and nothing that Mr. Keelan may have agreed to in the lower reaches is going to touch that.

Mr. Welch: I don't mean to say that I am making merely captious difficulties and requiring a witness to be called to testify to something that we all know he would testify to. I just want to be sure that this second column has an understandable basis and makes sense. I can't at the moment see that it does, and it doesn't seem to me material.

Mr. Pierson: Well, Mr. Welch, in connection with your discussion with Mr. Keelan, you have been notified of the method of computation that is used in this exhibit here; have you not?

Mr. Welch: I have been told by my associates that you have actually applied a double 104, which seemed to me shocking. That is all that I understand about it, sir.

Mr. Pierson: If Your Honor please, it seems to me, in so far as that phase of it is concerned, the computation as it is here made is made under the Respondent's theory of the method by which this should be computed if the income of the Petitioner Corporation hadn't been distributed, and the application as my opponent states of 104 as we view it the method by which this should be computed.

The Member: Well, after all, if it is going to be in evidence it is no good unless it is factually accurate. No kind of a mathematical computation is evidence of anything. What you want evidence for is the establishment of facts.

If there is any doubt about this I would leave it out, because unless it is helpful, unless it is useful, there is no place in the record for it.

If there is doubt about that, what good is it? It does not answer anything, really, to say that this is what the Respondent thinks is right because that is what every litigant thinks.

Mr. Pierson: I will withdraw the offer at this time and see if between counsel I may have the right to offer it at a later date.

The Member: All right.

I will say this, and I will say this to both of you, in order that you may know how to proceed: There has been enough said in these section 104 decisions to indicate that the extent of the saving to the shareholders of tax by reason of the non-distribution is a significant fact, and if that extent can be clearly and accurately demonstrated by a simple exhibit of a mathematical computation which does not contain questionable matter and which does not involve a lot of argument as to its proper rationalization, there is good place in the record for that type of demonstration, but in order to be of any use at all it has got to be free from argument as to the method and factors of its construction.

With that much before you, I feel perfectly certain that with all of these learned counsel on both sides of the table in this case you can agree upon a figure.

Mr. Pierson: We will attempt to do that, Your Honor.

The Member: All right.

Mr. Pierson: I offer at this time a schedule consisting of the securities sold by F. H. Prince & Company to the Petitioner, the Chicago Stock Yards Company, in the years 1931, 1932, and 1933, showing the cost, the selling price thereof, and in the last column the loss claimed thereon and at the bottom thereof is the statement that the above stated losses were claimed by F. H. Prince in his income tax return for the years 1931, 1932, and 1933, and were allowed by the Commissioner in the final closing of the determination of his correct tax liability for said years.

I understand, Your Honor, that there is no objection on the part of the counsel in so far as the figures and amounts

stated and statements contained in this document is concerned.

Mr. Welch: That is correct. Those sales took place and at those figures, with those resultant losses.

I guess it is my turn to speak.

I am just unable to see what materiality it has on the question of a man's intent to avail of a corporation to avoid surtaxes, and I will object to it as immaterial.

The Member: I will overrule the objection.

(The document so offered and received in evidence was marked "Respondent's Exhibit E," and made a part of this record.)

Mr. Welch: Could I have an exception noted?

The Member: Yes.

Mr. Pierson: If Your Honor please, without stating each time an offer is made, these documents which I will now offer in evidence, I understand Counsel agrees to the facts and figures and statements contained therein.

Is that true, Mr. Welch?

Mr. Welch: Yes, if you are talking about what I think you are.

Mr. Pierson: When I say "these documents," Mr. Welch, I mean to say the 1934 to 1937 income and balance statements of the respective corporations in the family group.

Mr. Welch: Yes.

Mr. Pierson: I offer the net income statement, dividends paid, and other data of the Union Stock Yards and Transit Company of Chicago together with Schedule A, covering the years 1934, 1935, 1936, and 1937.

Mr. Welch: If Your Honor please, I guess I heard the barn door lock on this the other day, but in spite of what Your Honor said, I carefully tried my case within the limits of the taxable year.

Your Honor will observe our charts end at 1933, our tes-

timony ends at 1933, and I am frank to say that some witnesses just will not re-appear.

I object to this because I think it is immaterial and because it is curiously awkward for a Petitioner to put in a direct case which I believe is on the correct basis, limiting himself to the years in question and then have the Government, so far as I know, reversing the position that it has always taken, that being that usually the Petitioner wants the later figures and the Government objects.

In the Grocery case to which I conceive this case to be a very close parallel, the petitioner sought to show the later years, the Government objected, the Board Member said it was his view that the later years were perfectly immaterial. I used the curious phase for the sake of the record, I will admit.

We have got a lot of record here and I don't think it does the record much good to have them all admitted and it clutters up my mind and clutters up the case and I admit it irritates me, and having said all that I will add the simple words "I object" to these particular documents.

The Member: What is the significance in the record, Mr. Pierson? What is the significance to this case?

Mr. Pierson: There has been a good deal of testimony with regard to the trial of this case with respect to this condition which has arisen and which will arise in 1940 and in computing and compiling the situation of facts to which we went to great trouble. It is true we cut off the taxable year 1933, our last taxable year, but the Respondent feels, in the light of the petition, the Petitioner has taken in this case with respect to these existing obligations which will fall on our taxpayer in the taxable year 1940; we have endeavored to compile this additional data to show the standing of the corporation on and after our taxable years through the taxable year 1937, which was the last one we were able to obtain

data, so far as we have amended the balance sheets or changed them from our own records.

As they appear, they are the balance sheets and net income statements taken from the respective books of the corporations.

The Member: Now from the standpoint of the Respondent, what do these exhibits tend to show which helps his defense?

Mr. Pierson: They are in rebuttal, Your Honor, of the impression that I believe has been attempted to be put before the Board as to all of this necessity of having to pay off those obligations in the later years.

It shows the respective condition of these corporations.

The Member: What, concretely, does it show upon which you can base an argument, because if you can show me anything upon which a reasonable argument can be predicated which will sustain or help to sustain the Respondent's determination, I would be disposed to let it in, but I want to know before that how it does operate in that respect.

Mr. Pierson: Well, Your Honor, please, we expect to argue and attempt to show that this condition which has been stated to the Board as arising in 1940 is of little or no moment by virtue of the statement of the corporations as they continued to exist on up through the years, particularly as to the earnings in those years.

The Member: What does it show in that respect; that the earnings increased and irrespective of this building up of a reserve that in 1940, they were, nevertheless, going to be able to liquidate as they thought they would; that sort of thing?

Mr. Pierson: That is correct, Your Honor, and that the earnings of the respective corporations were substantial throughout these years, and that those earnings might be

taken in the last five years and satisfy the obligations on the bonded indebtedness at that time.

The Member: I will overrule the objection.

Mr. Welch: Will Your Honor save my exception?

The Member: Yes. All you need do is say you except. There is nothing I can do about it.

Mr. Welch: I would like to add one other word, maybe for amusement, no 104 in the succeeding years will be made. The assessments have been made on another theory, is the real answer, and it seems now to me that the Government takes the position that we did unreasonably accumulate in the later years and yet were assessed on another theory and offers this additional evidence on that theory.

The Member: That anomaly may all resolve when you hear these gentlemen present their theory.

Mr. Pierson: I believe the offer was made on that; that was with regard to the Union Stock Yards and Transit Company of Chicago.

The Member: That is right.

I overrule the objection, which means the exhibit is received.

(The document so offered and received in evidence was marked "Respondent's Exhibit F," and made a part of this record.)

Mr. Pierson: I offer the balance sheets per books of the Union Stock Yards and Transit Company of Chicago for the years ended December 31, 1934; December 31, 1935; December 31, 1936, and December 31, 1937, together with an attached sheet showing the adjustments to the surplus contained in said balance sheets which follows the adjustments which have already been stipulated for the prior years.

Mr. Welch: Objection.

The Member: Overruled.

Mr. Welch: And exception.

(The documents so offered and received in evidence were marked "Respondent's Exhibit G," and made a part of this record.)

Mr. Pierson: I offer in evidence the statement of the net income received and dividends paid by the Stock Yards Harness and Saddlery Company for the taxable years 1934, 1935, 1936, and 1937.

Mr. Welch: Objection.

The Member: Overruled.

Mr. Welch: Exception, please.

(The documents so offered and received in evidence, were marked "Respondent's Exhibit H," and made a part of this record.)

Mr. Pierson: I offer in evidence the balance sheets per books of the Stock Yards Harness and Saddlery Company for the years ended December 31, 1934, December 31, 1935, December 31, 1936, December 31, 1937.

Mr. Welch: Objection.

The Member: Overruled.

Mr. Welch: Exception, please.

(The documents so offered and received in evidence were marked "Respondent's Exhibit J," and made a part of this record.)

Mr. Pierson: I offer in evidence the balance sheets per books of the Chicago Junction Railway Company for the years ended December 31, 1934, to December 31, 1937, inclusive, together with a statement of the adjustments to surplus which is a separate sheet attached thereto.

Mr. Welch: Objection.

The Member: Overruled.

Mr. Welch: Exception, please.

(The documents so offered and received in evidence were marked "Respondent's Exhibit K," and made a part of this record.)

Mr. Pierson: I offer in evidence a statement of the net income received and dividends paid by the Chicago Junction Railroad Company for the years 1934 to 1937, inclusive, together with a sheet thereto attached relative to the adjustments necessary to revise the book net income to restore depreciation charged off on the books in excess of that allowed by the Bureau of Internal Revenue.

Mr. Welch: Objection. It is the same type, Your Honor.

The Member: Well, is it? I am only thinking of the last phrase "in excess of that allowed by the Bureau of Internal Revenue."

Mr. Pierson: Do you desire a statement as to that, Your Honor?

The Member: I don't understand it, in the light particularly of the suggestion that I have heretofore made about the phrase like that importing a lot of law or regulations or conduct—

Mr. Pierson: I think I can clear that up.

I understand there is no objection on the part of counsel to those adjustments that are made other than your general objection to the whole document.

Mr. Welch: I think that is true.

I think I wouldn't want it excluded on that particular ground.

My objection is on the broader ground.

The Member: I am looking beyond your question of admissibility and want to get at this time, when the offer is made, if I can, just what the meaning is with regard to that phrase "in excess of that allowed by the Bureau of Internal Revenue." Otherwise, I have got to guess, when I come to read this record in the privacy of my office in deciding the case, what this means. You might as well tell me now. You know more about it than I do.

Mr. Pierson: May I have the last one on which I made the offer?

(The Clerk hands documents to Mr. Pierson.)

Mr. Pierson: If Your Honor please, on that sheet is stated the net loss per books, and in the next column is a column headed "Excessive Depreciation Charged Off of Books and Disallowed," and in the last column, "Net Loss Revised." That is the net loss as adjusted by the Commissioner of Internal Revenue through the adjustment of depreciation thereon which revises the net loss per books downward to what I understand is agreed between counsel as the correct net loss revised.

Mr. Keelan: No, that is not right.

The Member: They say that is not right.

Mr. Pierson: I might correct that statement to say, Your Honor, that it doesn't say that is agreed to by counsel, it says the net loss revised on this sheet, which shows the reduction is excessive depreciation which is charged off and disallowed by the Commissioner.

The Member: Well, is it agreed that it was correctly disallowed by the Commissioner? Is that question gone? Is it disposed of? That is what I want to know.

Mr. Pierson: I understand that that is the adjustment which the Commissioner made in depreciation in arriving at the tax liability for those years.

The Member: Yes, but isn't that in issue?

Mr. Pierson: No. This is for the years 1934, 1935, 1936, and 1937.

The Member: For the year in question there is an issue like that, isn't there?

Mr. Pierson: I don't think there is, Your Honor; not on the adjustment for depreciation.

The Member: Well, I guess I will have to leave it to you. I am too foggy about it.

Mr. Pierson: I think the matter with respect to the adjustments contained therein, Your Honor, will have been referred to adequately in brief.

The Member: That is what I am afraid of. I can't talk to people when I am reading a brief.

We will receive it.

Mr. Welch: Over my objection and exception?

The Member: Oh, yes.

(The documents so offered and received in evidence were marked "Respondent's Exhibit L," and made a part of this record.)

Mr. Pierson: I offer in evidence the balance sheets per books of the Chicago Junction Railroad Company for the years ended December 31, 1934, to December 31, 1937, together with a sheet attached thereto showing adjustments to the deficit account contained in said balance sheets which carry forward the adjustments already referred to in the agreed stipulation.

Mr. Welch: Object.

The Member: Overruled.

Mr. Welch: Exception, please.

(The documents so offered and received in evidence were marked "Respondent's Exhibit M," and made a part of this record.)

Mr. Pierson: I offer in evidence the statement of net income received and dividends paid by the Produce Terminal Corporation for the taxable years 1934 to 1937, inclusive.

Mr. Welch: Objection.

The Member: Overruled.

Mr. Welch: Exception, please.

(The document so offered and received in evidence was marked "Respondent's Exhibit N," and made a part of this record.)

Mr. Pierson: I offer in evidence the balance sheets per

books of the Produce Terminal Corporation for the years ended December 31, 1934, to December 31, 1937, inclusive, with a sheet attached indicating the adjustments made to the surplus account contained in the balance sheets which carry forward the adjustments which have previously been stated in the agreed stipulation of facts.

Mr. Welch: Objection.

The Member: Overruled.

Mr. Welch: Exception, please.

(The documents so offered and received in evidence were marked "Respondent's Exhibit O," and made a part of this record.)

Mr. Pierson: I offer in evidence the statement of the net income received and dividends paid of the Central Manufacturing District for the taxable years 1934, 1935, 1936, and 1937.

Mr. Welch: Objection.

The Member: Overruled.

Mr. Welch: Exception, please.

(The documents so offered and received in evidence were marked "Respondent's Exhibit P," and made a part of this record.)

Mr. Pierson: I offer in evidence the balance sheets per books of the Central Manufacturing District for the years ended December 31, 1934, to December 31, 1937, inclusive, with a sheet attached showing the adjustment to the surplus contained in said balance sheet which corresponds to certain adjustments made in the agreed stipulation of facts for the earlier years.

Mr. Welch: Objection.

The Member: Overruled.

Mr. Welch: Exception, please.

(The documents so offered and received in evidence were

marked "Respondent's Exhibit Q," and made a part of this record.)

Mr. Green: If Your Honor please, do we omit "S" when we get to it in view of the fact that we have used it in the stipulation?

The Member: Yes, we had better omit that.

Mr. Pierson: I offer in evidence the statement of the net income received and dividends paid of the Central Storage and Forwarding Corporation for the taxable years 1934 to 1937, inclusive.

Mr. Welch: Objection.

The Member: Overruled.

Mr. Welch: Exception.

The Clerk: That is Respondent's Exhibit R.

(The document so offered and received in evidence was marked "Respondent's Exhibit R," and made a part of this record.)

Mr. Pierson: I offer in evidence a statement of the balance sheet per books of the Central Storage and Forwarding Corporation for the years ended December 31, 1934, to December 31, 1937, inclusive.

Mr. Welch: Objection.

The Member: Overruled.

Mr. Welch: Exception, please.

The Member: I direct the Clerk to mark this as Exhibit T, and state for the record that the reason is to avoid confusion with the stipulation exhibits which are all marked "S" with serial numbers.

The Clerk: This is Respondent's Exhibit T.

(The document so offered and received in evidence was marked "Respondent's Exhibit T," and made a part of this record.)

Mr. Pierson: I offer in evidence a statement of the net income and dividends paid and other data of the Chicago June-

tion Railways and Union Stock Yards Company; namely, the New Jersey Company, for the taxable years 1934 to 1937, inclusive.

Mr. Welch: Objection.

The Member: Overruled.

Mr. Welch: Exception.

The Clerk: Respondent's Exhibit U.

(The document so offered and received in evidence was marked "Respondent's Exhibit U," and made a part of this record.)

Mr. Pierson: I offer in evidence the balance sheets per books of the Chicago Junction Railways and Union Stock Yards Company for the years ended December 31, 1934, to December 31, 1937, inclusive, together with three sheets thereto attached containing adjustments to the surplus account stated in said balance sheets to reflect the adjustments which are carried through and were agreed to in the stipulation of facts for the prior years.

Mr. Welch: Objection.

The Member: Overruled.

Mr. Welch: Exception.

The Clerk: Exhibit V.

(The documents so offered and received in evidence were marked "Respondent's Exhibit V," and made a part of this record.)

Mr. Pierson: I offer in evidence a statement of the net income received and dividends paid per books of the Chicago Stock Yards Company for the taxable years 1934 to 1937, inclusive.

Mr. Welch: Objection.

The Member: Overruled.

Mr. Welch: Exception.

The Member: That is the Petitioner, isn't it?

Mr. Pierson: That is the Petitioner, Your Honor.

The Clerk: Exhibit W.

(The document so offered and received in evidence was marked "Respondent's Exhibit W," and made a part of this record.)

Mr. Pierson: I offer in evidence the balance sheets per books of the Chicago Stock Yards Company designated at the top "Maine Company" for the years ended December 31, 1934, to December 31, 1935, inclusive, together with one sheet thereto attached as showing adjustments to the surplus account contained in the balance sheet.

Mr. Welch: Objection.

The Member: Overruled.

Mr. Welch: Exception.

The Member: Wait a minute.

Mr. Pierson, the Respondent's theory as to the significance of these exhibits for subsequent years is, substantially speaking, all summed up, isn't it, in the significance, whatever it may be, of the four figures on Exhibit W as to the Petitioner Corporation shown in the column headed "Net Income"? Isn't the significance almost entirely focussed in those four figures?

Mr. Pierson: I think that exactly, Your Honor. I believe it also goes back to your sources of income; that is, taking the first column where you have the distribution from New Jersey Company and its subsidiaries. That is a summary of those figures; that is true.

The Member: No, but I mean aren't those four figures there the crucial figures for such significance as the four subsequent years here involved have to the decision of this case?

Mr. Pierson: Well, I don't think so, Your Honor.

The Member: You don't?

Mr. Pierson: No. I think that you have—as long as Petitioner has presented the case on the basis of the background

of all of these companies, that all of them, their activities and everything that they do, the source of income, has a bearing on that phase of it, too.

The Member: Well, I suppose it has a bearing or you wouldn't put it in at all, but doesn't it all become more and more intense as it gets to the point of the net income of this Petitioner top corporation? Isn't that the crux of it all?

Mr. Pierson: Your Honor, I think that leads to the crux of it. That is, we are dealing here with the surplus of the Maine Corporation. That is our Petitioner here before the Board.

The Member: Yes.

Mr. Pierson: And the statement of income for these later years does rely a great deal on the column that is contained in here, but, as I have stated, I think that this background of the other corporations also has its place in considering the general set-up, because it has been testified here that these are run-up incomes from your other companies up to the Maine Company.

The Member: Yes, but it all runs into this 1940—

Mr. Pierson: That is correct, Your Honor.

The Member: —prospect.

Mr. Pierson: That is correct.

The Member: And the thing that has more influence upon the 1940 prospect than anything else is the net income of the Maine Corporation largely to the extent it is derived from the other corporations, but from whatever source it is derived, it is the net income of the Maine Corporation that can be used to achieve the principal purpose as has been said to be in their minds for 1940.

Have I got that straight?

Mr. Pierson: I think there must also be taken into consideration, if Your Honor please, in that regard the financial

condition of the other corporations as well, because it is only the income of those corporations that come over to our Maine Company. That is, they have their assets and balance sheets.

The Member: Yes.

Mr. Pierson: And it is their financial condition as well that we look to to see what the situation is going to be in 1940 as to what they can do about liquidation themselves.

The Member: All right. Your next?

Mr. Pierson: I offer in evidence—

The Clerk: That last exhibit was Exhibit X.

(The document so offered and received in evidence was marked "Respondent's Exhibit X," and made a part of this record.)

Mr. Pierson: I offer in evidence the statement of the net income received and dividends paid by the Pau Corporation for the taxable years 1934 to 1937, inclusive.

Mr. Welch: Objection.

The Member: Overruled.

Mr. Welch: Exception, please.

The Clerk: Y.

(The document so offered and received in evidence was marked "Respondent's Exhibit Y," and made a part of this record.)

Mr. Pierson: I offer in evidence the balance sheets per books of the Pau Corporation for the years ended December 31, 1934, to December 31, 1937, inclusive.

Mr. Welch: Objection.

The Member: Overruled.

Mr. Welch: Exception, please.

The Clerk: Z.

(The document so offered and received in evidence was marked "Respondent's Exhibit Z," and made a part of this record.)

Mr. Pierson: I offer in evidence a schedule of the securi

ties owed by F. H. Prince and F. H. Prince & Company to Maine Company from December 31, 1934, through December 31, 1936.

If Your Honor please, I have also a schedule sheet which I will offer as one with regard to the cash indebtedness due from corporations with a summary of taxes, if that is satisfactory.

Mr. Welch: This is another matter. This is not earnings?

Mr. Pierson: No, that is correct. I am making the offer on that at the present time.

Mr. Welch: You are offering now a schedule of securities due from F. H. Prince & Company or F. H. Prince to the Maine Company and the cash due for those years?

Mr. Pierson: Yes, as two separate sheets.

Mr. Welch: This is another matter and I object to it on a different ground. Now we have the earnings and balance sheets and things of that sort, and Your Honor overruled me, and we got to the financial history of the company. This schedule of changes in the securities situation and in the loan situation I object to, since it cannot have any bearing upon the income or profits of the Maine Company.

Mr. Pierson: If Your Honor please, in that regard, Respondent takes the position that it does have a bearing upon the financial set-up of the Maine Company; that is, these sheets represent these securities which have been borrowed or loaned by the Maine Company to F. H. Prince and F. H. Prince & Company in these years together with the amount of cash—

The Member: Well, I wish you would be a little more specific and tell me what the true significance is. It really doesn't help me very much when you say that may have a bearing. That doesn't mean very much. What bearing, to use your own words, do they have? What I would like to know is, when you have a question of this sort as to whether

the evidence of subsequent events is or is not admissible upon the issues in this case, it can only be admissible if it has any significance, which leads to the determination of the issue in the way that you think the determination should be made. Otherwise, you wouldn't offer it. Now, I am asking you only what the Respondent thinks is the significance of this, and if I can see that it has in the mind of what I think is a reasonable man some significance leading towards that conclusion, I would be disposed to let it in, but I can't let it in blindly until I know that it does have that significance.

Mr. Pierson: If Your Honor please, that goes back to the same statement that I heretofore made about the financial condition of the respective companies looking toward 1940 to which testimony has been here introduced.

The Member: Yes. This isn't one of those companies?

Mr. Pierson: No.

The Member: This is an individual and some sort of a nameless—not nameless, but some sort of a descriptionless organization which isn't a corporation, and it isn't anything, so far as I have been able to discover, and there has been some kind of borrowing going on after the close of the last taxable year that is in issue here. Now, what—

Mr. Pierson: That borrowing, if Your Honor please, by the contents contained in these documents, show the activities of our Petitioner, the Maine Company, in loaning money to the stockholder during these years '34, '35, '36, and '37. That activity follows through from the testimony and the evidence which has gone in heretofore showing that the individual was borrowing money throughout those years. Now, as he borrows the money, and as his F. H. Prince & Company, which the record shows he is in control of or practically owns—as he borrows that money he takes out of the corporation, and there again it will leave the Maine Company in a position as we come down to 1940 with money being

given over to the individual during all of these years both to cash and securities.

The Member: And this is a projection of a course of conduct that was in existence as well during the taxable years; is that true?

Mr. Pierson: That is correct, Your Honor. That is correct, Your Honor.

The Member: You renew your objection?

Mr. Welch: I would like to say one more word. The preceding exhibits that have been offered and accepted over my objection, I take it, are offered purely on the point of unreasonable accumulations. That is to say, I take it that the theory is that the Government wishes to show that in some way because of accumulations after the taxable year in question, we must unreasonably have accumulated in prior years, or heaven knows when, but, anyway, it has to do with earnings and accumulations, I take it.

This evidence here offered is on quite a different footing and has to do, I take it, with something that we all know we are trying, and that is the question of intention. Did Mr. Prince intend to take the money down from the corporation in the guise of a loan when it should have been a dividend? And, as I said at an earlier time in this case, there have been cases tried in which the intention was found to exist in one year and not to have existed in others. Any evidence, and the evidence is slight in what is offered here, that the intention existed in the later years, would not prove nor would it, I think, even be evidence of the existence of the intention in the earlier years, and for that reason I object to this offer on a somewhat different basis and somewhat more stronger than I did to the others, the earlier exhibits that were admitted over my objection.

May I inquire if this is the last of the series of what I might call post-war offers?

Mr. Pierson: With the exception, Mr. Welch, of the interest paid, which, I take it, you will want if the original exhibit is received.

The Member: I overrule the objection only because I can see that there is a conceivable possibility that the subsequent events may indicate the existence of a course of conduct which in itself may demonstrate to some extent an intention during the taxable years.

Mr. Welch: Are you going to offer the interest paid, too?

Mr. Pierson: Yes, I will offer that as the next exhibit.

I offer the exhibit consisting of three sheets, the document consisting of three sheets at the present time.

The Member: That is received.

Mr. Welch: Objection and exception if I may, sir?

The Member: Yes.

The Clerk: Respondent's Exhibit AA.

(The document so offered and received in evidence was marked "Respondent's Exhibit AA," and made a part of this record.)

Mr. Pierson: I offer at this time a schedule of the interest paid by F. H. Prince and F. H. Prince & Company to the Maine Company for the years 1934, 1935, 1936, and 1937. I take it that Mr. Welch desires that inasmuch as the other has been received in evidence.

Mr. Welch: I appreciate your offering it.

The Member: You object on a similar ground?

Mr. Welch: I don't know what to do. I guess I won't object to this because if the others are in, I want this in. Without waiving my objection to prior exhibits on the possible ground of any inconsistency in position, I do not object to this.

The Clerk: That is Respondent's Exhibit BB.

(The document so offered and received in evidence was

marked "Respondent's Exhibit BB," and made a part of this record.)

Mr. Pierson: If Your Honor please, I understand Counsel for Petitioner has no objection to the document I am now offering in so far as it is a statement of what is contained herein, and I will state what it is.

I offer at this time a transcript of the journal entries relating to sale of certificates of beneficial interest in the Central Manufacturing District as of May 26, 1936.

Mr. Welch: That is objected to.

The Member: Is that from the journal of the Central Manufacturing District?

Mr. Pierson: That is from the journal of the Chicago Junction Railways and Union Stock Yards Company.

The Member: You say you have an objection, Mr. Welch?

Mr. Welch: Well, my objection is on the same ground.

The Member: The objection is overruled.

Mr. Welch: And my exception noted?

The Clerk: Respondent's Exhibit CC.

(The document so offered and received in evidence was marked "Respondent's Exhibit CC," and made a part of this record.)

Mr. Welch: Have you finished this line?

Mr. Pierson: Yes, I have.

Mr. Welch: I would like to say one other word, although I doubt if it may elicit anything from Your Honor. In the Grocery case, the Board Member said to counsel indicating that it was his view that the subsequent proof as to what happened in the subsequent years was of little or no weight. I suppose I have no right to call for Your Honor's views, but I must, myself, consider whether I shall now start a new lawsuit about the subsequent years and be prepared to put witnesses on in rebuttal if I deem it advisable or not. I am unhappy in the case in that we don't know, well, what the is-

sues are as to the years we are trying, and now evidence has gone in as to later years which I believe to be inadmissible and of little or no weight, and I think Your Honor appreciates the difficulty of my position, scarcely knowing whether I should offer some evidence or follow my instinct, which is that it is at most of trivial importance, and that the case in the end must be tried on the evidence relating to the years in question.

The Member: I have no hesitation in expressing my view for the little weight it has, but I think is negligible. The expression of my brother Smith in, I believe it was, the National Grocery Company case became of no consequence at all after the Supreme Court had and decided the case, and in the light of the Supreme Court's opinion I don't think it makes a particle of difference what Mr. Smith's view of the weight, probative force of the evidence as to the subsequent occurrences. I think it has but slight weight, but anything that I may think about that now is of little consequence in view of the wholly unknown scope of the law on this subject. There has been but one case on the subject, and that was decided by the Supreme Court and the cases have been so scarce that I think no one can draw a line of progress of the law under the case except to prick it out, as Mr. Justice Holmes said.

I doubt very much whether the subsequent events have any significance unless they are to be tied up very clearly by a course of conduct to the intentor what the statute calls the purpose during the taxable years in question. Now, it is possible that it can be tied up, and I am supposing that it is probable that the Respondent will tie it up, and if he can tie it up, I think it would be error on my part to exclude it. If he does tie it up, it is the Petitioner's risk as to whether it is or is not necessary to put in evidence that will overcome whatever force the Respondent's evidence may have. I see

nothing that I may say will lessen that risk. You have got to take it, and it is imposed upon you by something that it is not within my control at all.

Mr. Welch: Thank you, sir.

The Member: I may say that I appreciate very keenly the difficulty the Petitioner is in by reason of the uncertainty as to the Respondent's petition, because I, myself, am in an equally baffling uncertainty.

Mr. Pierson: If Your Honor please, I think we will attempt to clear that up after some of our evidence is in, because it is our purpose to put these returns in evidence upon which reference will be made.

The Member: I can't deplore too strongly the fact that I have been sitting here for four days listening to the Petitioner's evidence in a case which arose through a determination of the Respondent as to which I am yet without a clear and specific statement as to the grounds for the determination. I leave aside what seems to me to be the unfairness to a petitioner to be asked to come in and litigate a case in which he is required to prove almost entirely negative possibilities and deal only with my own idea in attempting to tie up that evidence with a hypothetical theory which I have got to grope for in order to find in any form. I have been groping for four days, and I am completely exhausted by trying to find out which one of a dozen possible theories is the one to which to tie the evidence in question in order to give it any significance. I think it is an unfair proceeding from the standpoint of the Board, if no one else.

Mr. Pierson: I think we will attempt to enlighten Your Honor upon that so that we will get to the basic factor of it.

If Your Honor please, Counsel for Petitioner does not object, I take it, to the introduction of the income tax returns of the Petitioner Corporation beginning with the years 1911

through the years 1929, the years 1930, '32, and '33 having already been introduced in evidence by Petitioner.

Is that correct, Mr. Welch?

Mr. Welch: Well, I just am without interest. This is what we might call the pre-war period now. If the Government wants to go into that, I just don't care. Again it irritates me because it clutters my mind in the record, but it is all right, if you wish to do it.

The Member: You say the income tax returns. You mean the excise tax returns?

Mr. Pierson: It will be income tax returns and income and excess profits tax returns as they apply to the respective years.

The Member: No, but I mean 1911 and 1912 before the income tax.

Mr. Pierson: Yes. I might say that our first year is 1912, and it is the return of annual net income of miscellaneous corporations, so captioned, and filed by the Chicago Stock Yards Company, our petitioner in this case.

I offer such return for the year ended December 31, 1912.

The Clerk: That is Respondent's Exhibit DD.

(The document so offered and received in evidence was marked "Respondent's Exhibit DD," and made a part of this record.)

Mr. Green: Are we going to get copies of these?

Mr. Pierson: I offer in evidence—

The Member: Mr. Green asks if he is going to get copies of them. Is there any objection on the part of the Petitioner to turning these over to the Respondent's Counsel over the week end? No. I mean the opposite. Is there any objection on the part of the Respondent?

Mr. Welch: I think I would object because I don't want Mr. Green to have to look them over over the week end.

The Member: I thought that is what you asked for before.

You asked me about some exhibits before you asked if there were copies of them, and Mr. King said—I mean after that Mr. Pierson said he would make copies. Then Mr. King indicated that it was impossible to make those for you to have over the week end. I thought you meant all of these things.

Mr. Welch: Not these by any means.

Mr. Green: My only question was that we are missing some of the old copies, and I would like to have them.

The Member: Are you going to have them photostated?

Mr. Pierson: If Your Honor please, we will cooperate, with counsel if we are given permission to withdraw them and have them photostated. We will have that done.

The Member: Very well.

Mr. Pierson: I offer in evidence the return of annual net income of the Chicago Stock Yards Company for the year ended December 31, 1913.

The Clerk: That is Respondent's Exhibit EE.

(The document so offered and received in evidence was marked "Respondent's Exhibit EE," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return of annual net income of the Chicago Stock Yards Company for the year ended December 31, 1914.

Mr. Welch: May I interrupt to ask whether or not there is any interest in the returns being offered other than the figures contained therein?

Mr. Pierson: Well, in reply to that, Mr. Welch, I will say that it is offered for the purpose of showing the figures contained therein and the other data with regard to the position of the respective officers of the corporation to which testimony has been adduced here before the Board.

Mr. Welch: What caught my eye as we turned them over was this: I observed the phrase "Chicago Stock Yards Company and its businesses" or after that the words "acquiring

guaranteeing, and dealing in securities." I don't know whether some subtle poison is being put in on the ground or suggesting that we are a holding company, a mere holding company by virtue of these returns, and, if so, I wish to point out that I object to the returns being offered for that purpose. That is to say, the fact that we may have been a mere holding company so many years ago would, I take it, be no evidence that we were a mere holding company now, nor do I at all understand that there is any suggesting that we were ever a mere holding company. If Mr. Pierson has in mind arguing anything of this sort, I should like to know it. If he is trying to show the financial history of the company from the tax returns, that seems to be another dull matter.

Mr. Pierson: If Your Honor please, I make the offer for the purpose of showing the information contained in these returns which sets forth not only its financial condition and its income statement, but with respect to all of the other facts which are contained therein which are under oath by the officers of the corporation.

The Member: Well, there isn't any doubt but that you may do that, but there also isn't any doubt that you ought, in fairness, to let your adversary know what it is you are relying on in a document that is as voluminous as any tax return is, and since he has made a specific inquiry as to one item I think that ought, fairly, to be answered because he may have to get a lot of evidence to overcome it, if you are relying upon it and he wouldn't undertake to get any evidence to overcome something you weren't relying upon, and if you just say, "I am offering this for everything that is in it," it is hardly just fair.

Mr. Pierson: If you will just pardon me a moment, Your Honor.

(Counsel for the Respondent confer.)

Mr. Pierson: If Your Honor please, so far as argument on

that particular statement contained in the statement is concerned, Respondent does not intend to rely on the statement, especially back of those years. With the other returns which are already in evidence, they will speak for themselves.

However, the Respondent does offer it for the purpose of showing the facts and figures contained herein with regard to the surplus, income, and all of the financial structure of the corporation.

Mr. Welch: That is very fair of you and I thank you for that.

(The document so offered and received in evidence was marked "Respondent's Exhibit FF," and made a part of this record.)

Mr. Pierson: I offer the income tax return of annual net income of the Chicago Stock Yards Company for the year ended December 31, 1915.

Mr. Welch: I trust Your Honor will count it no discourtesy if I left the room momentarily and have Mr. Green follow this?

Mr. Pierson: If Your Honor please, might we have a recess for a few moments?

The Member: Yes, we will take a recess.

(There was a short recess taken.)

(The document so offered and received in evidence was marked "Respondent's Exhibit GG," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return of annual net income of the Chicago Stock Yards Company for the year ended December 31, 1916.

(The document so offered and received in evidence was marked "Respondent's Exhibit HH," and made a part of this record.)

The Member: Now you are just going right through, aren't you, with each year?

Mr. Pierson: That is correct.

The Member: You don't have to describe them every time. Just say the return for the year so and so and so and so and we will get through more quickly.

Mr. Pierson: There are schedules attached to some of these returns in the later years, and excess profits returns.

The Member: You are always including the schedules, aren't you?

Mr. Pierson: Yes.

The Member: Where there is an excess profits return attached to the schedule return, you may say so.

Mr. Pierson: I offer the 1917 income tax return in evidence, and also the corporation excess profits tax return. They are attached together, Your Honor.

The Member: What letter is that?

The Clerk: H.

(The document so offered and received in evidence was marked "Respondent's Exhibit H," and made a part of this record.)

Mr. Pierson: I offer in evidence the corporation income and profits tax return for the year 1918.

(The document so offered and received in evidence was marked "Respondent's Exhibit JJ," and made a part of this record.)

Mr. Pierson: I offer in evidence the corporation income and profits tax return for the calendar year 1919.

(The document so offered and received in evidence was marked "Respondent's Exhibit KK," and made a part of this record.)

Mr. Pierson: I offer in evidence tax return for the calendar year 1920.

(The document so offered and received in evidence was

marked "Respondent's Exhibit LL," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax and profits tax return for the calendar year 1921.

(The document so offered and received in evidence was marked "Respondent's Exhibit MM," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return for the calendar year 1922.

(The document so offered and received in evidence was marked "Respondent's Exhibit NN," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return for the calendar year 1923.

(The document so offered and received in evidence was marked "Respondent's Exhibit OO," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return for the calendar year 1924.

(The document so offered and received in evidence was marked "Respondent's Exhibit PP," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return for the calendar year 1925.

(The document so offered and received in evidence was marked "Respondent's Exhibit QQ," and made a part of this record.)

Mr. Pierson: I offer in evidence the tentative and completed tax return for the calendar year 1926.

(The document so offered and received in evidence was marked "Respondent's Exhibit RR," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return for the calendar year 1927.

The Member: Leave out "SS."

(The document so offered and received in evidence was marked "Respondent's Exhibit TT," and made a part of this record.)

Mr. Pierson: I offer in evidence the tax return for the calendar year 1928.

(The document so offered and received in evidence was marked "Respondent's Exhibit UU," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return for the calendar year 1929.

(The document so offered and received in evidence was marked "Respondent's Exhibit VV," and made a part of this record.)

Mr. Pierson: If Your Honor please, in that connection, while I haven't stated the schedule thereto attached to the respective returns, may I have it understood they are in evidence with the returns?

I offer in evidence the individual tax return of Frederick Henry Prince trust for the calendar year 1932.

(The document so offered and received in evidence was marked "Respondent's Exhibit WW," and made a part of this record.)

Mr. Pierson: I offer in evidence the fiduciary return of income of the Frederick Henry Prince trust for the calendar year 1932.

(The document so offered and received in evidence was marked "Respondent's Exhibit XX," and made a part of this record.)

Mr. Pierson: I offer in evidence the individual tax return of Frederick Henry Prince trust for the calendar year 1933.

(The document so offered and received in evidence was marked "Respondent's Exhibit YY," and made a part of this record.)

Mr. Pierson: I offer in evidence a copy of the fiduciary return of income of Frederick Henry Prince trust for the year 1933.

I might state, Your Honor, that that copy was furnished by Counsel for the Petitioner.

(The document so offered and received in evidence was marked "Respondent's Exhibit ZZ," and made a part of this record.)

Mr. Pierson: I offer in evidence the corporation income tax return of F. H. Prince & Company, Inc., for the calendar year 1932.

(The document so offered and received in evidence was marked "Respondent's Exhibit AAA," and made a part of this record.)

Mr. Pierson: I offer in evidence the corporation income and excess profits tax return of F. H. Prince & Company, Inc., for the calendar year 1933.

(The document so offered and received in evidence was marked "Respondent's Exhibit BBB," and made a part of this record.)

Mr. Pierson: I offer in evidence the individual income tax return of Frederick Henry Prince for the calendar year 1917.

(The document so offered and received in evidence was marked "Respondent's Exhibit CCC," and made a part of this record.)

Mr. Pierson: I offer in evidence the individual tax return of Frederick Henry Prince for the calendar year 1918.

(The document so offered and received in evidence was marked "Respondent's Exhibit DDD," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return of Frederick Henry Prince for the year ended December 31, 1919.

(The document so offered and received in evidence was marked "Respondent's Exhibit EEE," and made a part of this record.)

Mr. Pierson: I offer in evidence a copy of the income tax return of Frederick Henry Prince for the year ended December 30, 1920.

(The document so offered and received in evidence was marked "Respondent's Exhibit FFF," and made a part of this record.)

Mr. Pierson: I offer in evidence a copy of the income tax return of Frederick H. Prince for the year '21.

(The document so offered and received in evidence was marked "Respondent's Exhibit GGG," and made a part of this record.)

Mr. Pierson: I offer in evidence a copy of the income tax return of Frederick H. Prince for the calender year '22.

(The document so offered and received in evidence was marked "Respondent's Exhibit HHH," and made a part of this record.)

Mr. Pierson: A copy of the income tax return of Frederick H. Prince for the calendar year 1923.

(The document so offered and received in evidence was marked "Respondent's Exhibit III," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return of Frederick H. Prince for the calendar year 1924.

(The document so offered and received in evidence was marked "Respondent's Exhibit JJJ," and made a part of this record.)

Mr. Pierson: I offer in evidence a copy of the income tax return of Frederick Henry Prince for the calendar year 1925.

(The document so offered and received in evidence was

marked "Respondent's Exhibit KKK," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return of Frederick Henry Prince for the calendar year 1926.

(The document so offered and received in evidence was marked "Respondent's Exhibit LLL," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return of Frederick Henry Prince for the calendar year 1927.

(The document so offered and received in evidence was marked "Respondent's Exhibit MMM," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return of Frederick Henry Prince for the calendar year 1928.

(The document so offered and received in evidence was marked "Respondent's Exhibit NNN," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return of Frederick Henry Prince for the calendar year 1929.

(The document so offered and received in evidence was marked "Respondent's Exhibit OOO," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return of Frederick Henry Prince for the calendar year 1930.

(The document so offered and received in evidence was marked "Respondent's Exhibit PPP," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return of Frederick Henry Prince for the calendar year 1931.

(The document so offered and received in evidence was marked "Respondent's Exhibit QQQ," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return of Frederick Henry Prince for the year 1932.

(The document so offered and received in evidence was marked "Respondent's Exhibit RRR," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return of Frederick Henry Prince for the calendar year 1933.

(The document so offered and received in evidence was marked "Respondent's Exhibit TTT," and made a part of this record.)

Mr. Pierson: If Your Honor please, may I have the same understanding with respect to the returns of Mr. Frederick Henry Prince that that includes, also, the schedules thereto attached?

I offer in evidence the corporation income and profits tax return of Central Manufacturing District Company for the calendar year 1921.

Mr. Welch: Off the record?

The Member: Off the record.

(There was a discussion off the record.)

The Member: On the record.

Mr. Welch: Among other things, if Your Honor please, it is conceivable somebody might have to print this record some day. It is within your jurisdiction, I should think in regard to material the relevancy of which I cannot possibly see, should be excluded.

I think I ought to object to this series of returns.

The Member: You mean of the Central Manufacturing District only because it encumbers the record?

Mr. Welch: Well, in part. This is the Central Manufacturing District Company, I understand.

The Member: Is there any significance in the "Company" you are talking about?

Mr. Welch: It is something we haven't dealt with at all here, so far.

The Member: You mean that is a different organization?

Mr. Welch: It is.

Mr. Pierson: I would like to state that in that connection in the stipulation of facts the Central Manufacturing District Company, as I recall, is referred to in there. It is one of the companies as well, and not referred to on our chart as the family group, but is one of the companies which was in existence in and under the New Jersey Company and in which Mr. Prince was interested.

The Member: Well, that is not quite enough to make it significant. What is the reference to it? This, as I understand it, is not C. M. D.

Mr. Pierson: That is correct, Your Honor. This is C. M. D. Company.

The Member: Let me see what the significance is.

Mr. Pierson: Yes, if Your Honor will excuse me a moment. I will see if I can find that in the stipulation itself.

(Counsel for the Respondent confer.)

Mr. Pierson: If Your Honor please, I will withdraw the offer with respect to that company.

The Member: Very well.

Mr. Pierson: I offer in evidence the corporation income tax return of Produce Terminal Corporation for the period March 1 to December 31, 1926, that being the first year out of the affiliation.

The Member: First year what?

Mr. Pierson: When it filed a separate corporate return, not in the affiliated group.

The Member: Oh, yes.

Mr. Pierson: I offer that at this time.

(The document so offered and received in evidence was marked "Respondent's Exhibit UUU," and made a part of this record.)

Mr. Pierson: I offer in evidence the corporation income

tax return of Produce Terminal Corporation for the calendar year 1927.

(The document so offered and received in evidence was marked "Respondent's Exhibit VVV," and made a part of this record.)

Mr. Pierson: I offer in evidence the corporation income tax return of Produce Terminal Corporation for the calendar year 1928.

(The document so offered and received in evidence was marked "Respondent's Exhibit WWW," and made a part of this record.)

Mr. Pierson: I offer in evidence the corporation income tax return of the Produce Terminal Corporation for the calendar year 1929.

(The document so offered and received in evidence was marked "Respondent's Exhibit XXX," and made a part of this record.)

Mr. Pierson: I offer in evidence the corporation income tax return of Produce Terminal Corporation for the calendar year 1930.

(The document so offered and received in evidence was marked "Respondent's Exhibit YYY," and made a part of this record.)

Mr. Pierson: I offer in evidence the corporation income tax return of the Produce Terminal Corporation for the calendar year 1931.

(The document so offered and received in evidence was marked "Respondent's Exhibit ZZZ," and made a part of this record.)

Mr. Pierson: I offer in evidence the corporation income tax return of the Produce Terminal Corporation for the calendar year 1932.

(The document so offered and received in evidence was

marked "Respondent's Exhibit AAAA," and made a part of this record.)

Mr. Pierson: I offer in evidence a photostatic copy of the corporation income and excess profits tax return of the Produce Terminal Corporation for the calendar year 1933.

I might state to Your Honor that we have had that photostated, it being in audit in the Bureau at the present time, and may I have the understanding, Your Honor, with respect to the returns of the Produce Terminal Corporation that that, likewise, includes the schedules thereto attached?

For the purpose of the record, Your Honor, that consists of 13 photostatic sheets.

(The document so offered and received in evidence was marked "Respondent's Exhibit BBBB," and made a part of this record.)

Mr. Pierson: I offer in evidence the corporation income tax return of Pau Corporation for the calendar year 1932.

(The document so offered and received in evidence was marked "Respondent's Exhibit CCCC," and made a part of this record.)

Mr. Pierson: I offer in evidence the corporation income and excess profits tax return of Pau Corporation for the calendar year 1933.

(The document so offered and received in evidence was marked "Respondent's Exhibit DDDD," and made a part of this record.)

(A large number of documents were handed to Mr. Pierson by Mr. King.)

The Member: Oh, come now; we are not just a receptacle for the physical reception of whatever somebody thinks ought to be in this record. It ought to have some significance.

Mr. Pierson: If Your Honor please, in the stipulation as it has been drawn the parties have agreed as regards

to certain book incomes of the New Jersey Company and it is Respondent's purpose to put these income tax returns in to show the analysis as between the book income and the income per return and while we attempted to construct such a statement for the purpose of the record here, I understand my opponents didn't desire that that be done.

In order that we may do that, we feel that we should have these tax returns here in order that such an analysis may be made.

Mr. Welch: At the highest, certainly, we could offer just certain batches of that ghastly collection of documents before you, sir.

The Member: I don't see, technically, any way of avoiding it.

If the Government insists that these are a part of its case, there is no way of avoiding it.

Mr. Pierson: I might state, Your Honor, we are beginning here with the year 1917 instead of going back to the earlier years.

Mr. Welch: That seems long ago enough. Can't you move forward a little, Mr. Pierson?

Mr. Pierson: I might be able to cut the record down somewhat.

Just a moment, if Your Honor please? (Counsel for the Respondent confer.)

Mr. Pierson: Your Honor, my associate advises me that we might start with the year 1925 instead of 1917 in order to reduce the record.

I offer in evidence—and if Your Honor will permit me, I will refer to this as the New Jersey Company return, if I may—I offer in evidence the tentative and completed income tax return of the New Jersey Company for the calendar year 1925.

(The document so offered and received in evidence was

marked "Respondent's Exhibit EEEE," and made a part of this record.)

Mr. Pierson: I offer in evidence the tentative and completed return of the New Jersey Company for the calendar year 1926.

(The document so offered and received in evidence was marked "Respondent's Exhibit FFFF," and made a part of this record.)

Mr. Pierson: I offer in evidence the corporation tentative and completed income tax return for the New Jersey Company for the calendar year 1927.

(The document so offered and received in evidence was marked "Respondent's Exhibit GGGG," and made a part of this record.)

Mr. Pierson: I offer in evidence the tentative and completed corporation income tax return for the New Jersey Company for the calendar year 1928.

(The document so offered and received in evidence was marked "Respondent's Exhibit HHHH," and made a part of this record.)

Mr. Pierson: I offer in evidence the tentative and completed income tax return of the New Jersey Company for the calendar year 1929.

(The document so offered and received in evidence was marked "Respondent's Exhibit IIII," and made a part of this record.)

Mr. Pierson: I offer in evidence the tentative and completed income tax return of the New Jersey Company for the calendar year 1930.

(The document so offered and received in evidence was marked "Respondent's Exhibit JJJJ," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return of the New Jersey Company for the calendar year 1931.

(The document so offered and received in evidence was marked "Respondent's Exhibit KKKK," and made a part of this record.)

Mr. Pierson: I offer in evidence the income tax return of the New Jersey Company for the calendar year 1932.

(The document so offered and received in evidence was marked "Respondent's Exhibit LLLL," and made a part of this record.)

Mr. Pierson: I offer in evidence the tentative and completed corporation income and excess profits tax return of the New Jersey Company for the calendar year 1933.

(The document so offered and received in evidence was marked "Respondent's Exhibit MMMM," and made a part of this record.)

Mr. Pierson: May I have the same understanding, Your Honor, that the returns as referred to of the New Jersey Company includes the schedules thereto attached?

I might further state for the record that that is a consolidated income tax return for those years and with the understanding that I may have, Your Honor, with regard to the computation upon which was offered and which I withdrew, with regard to the computation of taxes, am I still correct in my understanding that we may offer that again before the case is closed?

The Member: I don't know.

Mr. Pierson: By that I mean the difference in the tax computation, in the event—

The Member: I know, but it is asking me to recapture too much, to answer that.

Mr. Pierson: I think that is in the record, already, Your Honor.

The Member: I can't go back and recapture what was said. I can't rule intelligently or answer your question, now.

Mr. Pierson: I am satisfied it was clear at the time. It was an excess caution on my part.

Now, if Your Honor please, I further understand we may withdraw these returns and substitute photostats and have photostats made for counsel for the other side.

The Member: Yes, and in view of the fact that one of these things that you put in evidence was a miniature photostat I want you to have full-sized photostats of all the others.

Mr. Pierson: All right, sir.

The Member: Because those miniature photostats are too hard to read and deal with. The others are just as easy to make and even they are difficult to see clearly.

You may withdraw these and make full sized photostatic copies.

As I understand, you are going to make a copy for your adversary.

Mr. Pierson: I think we can get to an understanding as to the ones which my opponent needs and we will have those photostated for him.

The Member: All right.

Now what? The Respondent still has the ball.

Mr. Pierson: In that connection, as Mr. Clark heretofore stated, we are in the position of having our witness—

The Member: I understand about that. You don't need to repeat that.

Are these all the exhibits and are you now ready, on Monday morning, to start right in with your witness?

Mr. Pierson: I understand Mr. Green has a correction or two on one of these exhibits, or two exhibits, from 1934 to 1937; is that correct?

Mr. Green: Mr. King and I have agreed to take care of that and that will be made outside the courtroom so that we will not have to bother the Court.

Mr. Pierson: Aside from that we will be ready to start Monday morning with our further testimony in this case.

The Member: We will suspend now until 10 o'clock Monday morning.

(Whereupon, at 4:20 o'clock p. m., February 3, 1939, the hearing in the above-entitled matter was adjourned.)